

DISTRIBUTION LIST

CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS  
SERIES 2009

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SEWER REVENUE BONDS  
SERIES 2009

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The Pre-closing of the sale of the City of Williamstown, Sewer Revenue Bonds, Series 2009, will take place at the West Virginia Water Development Authority's office at 180 Association Drive in Charleston, West Virginia, at 1:30 p.m., prevailing time on December 8, 2009. The Closing will occur on December 9, 2009. No transaction shall be deemed to have been completed, and no documents shall be deemed to have been delivered unless or until all transactions are complete and all documents delivered.



**CITY OF WILLIAMSTOWN**

**SEWER REVENUE BONDS  
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM) and  
SERIES 2009 B (ARRA PROGRAM)**

**BOND ORDINANCE**

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CITY OF WILLIAMSTOWN

ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF WILLIAMSTOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$1,750,000 IN AGGREGATE PRINCIPAL AMOUNT OF ITS SEWER REVENUE BONDS, SERIES 2009; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNER OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A BOND PURCHASE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS; AND ENACTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WILLIAMSTOWN:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any order or Ordinance supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Bond Act") and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (the "SRF Act", and together with the Bond Act, 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 Williamstown (the "Issuer") is a municipality, public corporation and political subdivision of the State of West Virginia in Wood County of said State.

B. The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be constructed certain improvements and extensions to the existing public sewerage facilities of the Issuer, consisting of the replacement modification of the headworks screening facilities, installation of blowers with an upgrade capacity, replacement of the existing solids dewatering equipment, plant piping, electrical work and necessary appurtenances (collectively, the "Project"), which constitute properties for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (the existing public sewerage facilities of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System").

C. The Issuer intends to permanently finance a portion of the costs of acquiring, constructing and equipping the Project through the issuance of its revenue bonds to be sold to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund Program (the "SRF Program"), pursuant to the SRF Act, in order to take advantage of the favorable terms available to the Issuer under the SRF Program.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 2009, in the aggregate principal amounts of not more than \$1,750,000 (the "Series 2009 Bonds"), initially to be represented by two (2) bonds, to permanently finance a portion of the costs of acquiring, constructing and equipping of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefore; interest upon the Series 2009 Bonds prior to and during acquisition and construction of the Project and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Series 2009 Bond Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, commitment fees, fees and expenses of the Authority, including the SRF Administrative Fee, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2009 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the cost of acquiring, constructing and equipping the Project, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2009 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

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

F. It is in the best interests of the Issuer that its Series 2009 Bonds be sold to the Authority pursuant to the terms and provisions of a Bond Purchase Agreement

by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), in form satisfactory to the Issuer, the Authority and the DEP (the "Bond Purchase Agreement"), approved hereby if not previously approved by Ordinance of the Issuer.

G. There are outstanding obligations of the Issuer which will rank either on parity with or junior and subordinate to the Series 2009 Bonds as to liens, pledge and source of and security for payment, which obligations are designated as follows:

- a. \$15,551 City of Williamstown, Sewer Revenue Bond, Series 1987 A (the "Series 1987 A Bond");
- b. \$169,539 City of Williamstown, Sewer Revenue Bond, Series 1987 B (the "Series 1987 B Bond");
- c. \$659,637 City of Williamstown, Sewer Revenue Bond, Series 1987 A-1 (the "Series 1987 A-1 Bond"); and
- d. \$230,282 City of Williamstown, Sewer Revenue Bond, Series 2005 A (the "Series 2005 A Bond").

The Series 1987 A Bond, the Series 1987 A-1 Bond and the Series 2005 A Bond are hereinafter collectively called the "Parity Bonds." The Series 1987 B Bond is hereinafter called the "Subordinate Prior Bond."

The Series 2009 Bonds shall be issued on parity with the Parity Bonds and senior and prior to the Subordinate Prior Bond with respect to liens, pledge and source of and security for payment and in all other respects. The Issuer has met the coverage and parity requirements of the Parity Bonds and the Subordinate Prior Bond and the Ordinances authorizing the Parity Bonds and the Subordinate Prior Bond for issuance of the Series 2009 Bonds and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature. Prior to the issuance of the Series 2009 Bonds, the Issuer will obtain the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Parity Bonds and the Subordinate Prior Bond are met and the written consent of the Holders of the Parity Bonds and the Subordinate Prior Bond to the issuance of the Series 2009 Bonds on a parity with the Parity Bonds and senior and prior to the Subordinate Prior Bond. Other than the Parity Bonds and the Subordinate Prior Bond, there are no outstanding bonds or obligations of the Issuer that are secured by revenues or assets of the System.

H. The estimated revenues to be derived in each year following completion of the Project will be sufficient to pay all costs of operation and maintenance of the System and the principal of and interest, if any, on the First Lien Bonds, and to

make payments into all Sinking Funds, Reserve Accounts and other payments provided for herein, all as such terms are hereinafter defined.

I. The Issuer has complied with all requirements of West Virginia law and the Bond Purchase Agreement relating to authorization of the acquisition, construction and equipping of the Project, the operation of the System and the issuance of the Series 2009 Bond, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the obtaining of a certificate of public convenience and necessity and approval of this financing and necessary user rates and charges described herein from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2009 Bonds or such final order will not be subject to appeal or rehearing.

J. Pursuant to the Act, the Issuer has established a Sanitary Board, and the Sanitary Board has petitioned the Governing Body to issue the Series 2009 Bonds for the purposes described in this Ordinance.

K. The Project has been approved by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2009 Bonds by those who shall be the Registered Owner of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owner, 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 Owner or Owners of such Series 2009 Bonds, which shall be of equal rank and without preference, priority or distinction between any one bond of a series and any other bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

“Act” means, collectively, Chapter 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment hereof.

“Authority” means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2009 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 Governing Body of the Issuer or any temporary Mayor duly selected by the Governing Body.

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

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

“Bond Registrar” means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

“Bonds” means, collectively, the Series 2009 Bonds, the Prior Bonds, and any bonds on parity therewith subsequently authorized to be issued hereunder or by another Ordinance of the Issuer.

“Bond Purchase Agreement” means the bond purchase agreement heretofore entered, or to be entered, into by and among the Authority, the DEP and the Issuer, providing for the purchase of the Series 2009 Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified, by the Supplemental Resolution.

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

“Closing Date” means the date upon which there is an exchange of the Series 2009 Bonds for all or a portion of the proceeds of the Series 2009 Bond from the Authority.

“Code” means the Internal Revenue Code of 1986, as amended, and the Regulations.

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

“Completion Date” means the completion date of the Project, as defined in the SRF Regulations.

“Consulting Engineers” means Boyles and Hildreth, Spencer, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular,

full-time employee of the State or any of its agencies, commissions, or political subdivisions.

“Costs” or “Costs of the Project” means those costs described in Section 1.02D hereof to be a part of the cost of designing, acquiring, constructing and equipping the Project.

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

“DEP” means the West Virginia Department of Environmental Protection, or any other agency, board or department of the State that succeeds to the functions of the DEP.

“Depository Bank” means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

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

“First Lien Bonds” mean, collectively, the Series 1987 A Bond, the Series 1987 A-1 Bond, the Series 2005 A Bond and the Series 2009 Bonds.

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

“Governing Body” or “Council” means the City Council of the Issuer, as it may now or hereafter be constituted.

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

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

“Herein,” “hereto” and similar words shall refer to this entire Bond Legislation.

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

“Investment Property” means

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

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

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

“Issuer” means City of Williamstown, a municipal corporation, public corporation and political subdivision of the State of West Virginia in Wood County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

“Mayor” means the Mayor of the Issuer.

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

“Nonpurpose Investment” means any Investment Property, as defined in Section 148(b) of the Code, that is not a purpose investment.

“Operating Expenses” means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the costs, the SRF Administrative Fee, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and

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

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

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

"Paying Agent" means the Commission or other entity designated as such for the Series 2009 Bonds in the Supplemental Resolution with the written consent of the Authority and the DEP.

"Prior Ordinances" means, individually or collectively, the Ordinance of the Issuer enacted June 8, 1987, authorizing the Series 1987A, Series 1987B and Series 1987A1 Bonds, and the Ordinance of the Issuer enacted May 31, 2005, authorizing the Series 2005A Bond.

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

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

"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 or similar banking arrangements, fully secured by investments of the types described in paragraphs (a) through (e) above or fully insured by the FDIC, with member banks of the Federal Reserve system or 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 therefore; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investment pursuant to Chapter 12, Article 6C of the Code of West Virginia, 1931, as amended, including, without limitation, authorized pools of investments operated by such Investment Management Board; and

(i) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax

purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Recorder" means the Recorder of the Governing Body of the Issuer.

"Registrar" means the Bond Registrar.

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

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by the Prior Ordinance and continued hereby.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Series 2009 Bonds and the Prior Bonds.

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in any reserve account for the Series 2009 Bonds and the Prior Bonds.

"Revenue Fund" means the Revenue Fund established by the Prior Ordinances and continued hereby.

"Sanitary Board" means the Sanitary Board of the Issuer, as such term is defined in the Prior Ordinances.

"Series 2009 Bonds" means the Sewer Revenue Bonds, Series 2009, of the Issuer, authorized by this Ordinance.

"Series 2009 Construction Trust Fund" means the Series 2009 Construction Trust Fund established by Section 5.01 hereof.

"Series 2009 Bond Reserve Account" means the Series 2009 Bond Reserve Account established by Section 5.02 hereof.

"Series 2009 Bond Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2009 Bond in the then current or any succeeding year.

"Series 2009 Bond Sinking Fund" means the Series 2009 Bond Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective sinking funds established for the Series 2009 Bonds and the Prior Bonds.

"SRF Administrative Fee" means any administrative fee required to be paid under the Bond Purchase Agreement.

“SRF Program” means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

“SRF Regulations” means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

“State” means the State of West Virginia.

“Supplemental Resolution” means any Ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article “the,” refers specifically to the Supplemental Resolution or Ordinances authorizing the sale of the Series 2009 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2009 Bonds, and not so included, may be included in another Supplemental Resolution.

“Surplus Revenues” means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Series 2009 Bond and the Prior Bonds or any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund, the Sinking Funds and the Reserve Accounts.

“System” means the complete properties of the Issuer for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes, as presently existing in its entirety or any integral part thereof, and shall include the Project and any additions, improvements and extensions thereto hereafter constructed or acquired for said system from any sources whatsoever.

Additional terms and phrases are defined in this Ordinance as they are used. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender; and any requirement for execution or attestation of the Bonds or any certificate or other document by the Mayor or the Recorder shall mean that such Bonds, certificate or other document may be executed or attested by an Acting Mayor or Acting Recorder.

## ARTICLE II

### AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition, construction and equipping of the Project, at an estimated cost of not to exceed \$1,750,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, approved by the DEP and the Issuer and heretofore filed in the office of the Governing Body. The proceeds of the Series 2009 Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the construction of the Project, compatible with the financing plan submitted to the SRF Program.

The cost of acquisition and construction of the Project is estimated not to exceed \$1,750,000, all of which will be obtained from the proceeds of the Series 2009 Bonds.

## ARTICLE III

### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF BOND PURCHASE AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of funding a reserve account for the Series 2009 Bonds, paying costs of constructing the Project and paying certain costs of issuance of the Series 2009 Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 2009 Bonds of the Issuer. The Series 2009 Bonds shall be issued as two (2) bonds, designated as "Sewer Revenue Bond, Series 2009 A (West Virginia SRF Program) and Sewer Revenue Bond, Series 2009 B (ARRA Program)," in the principal amounts of not more than \$1,750,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2009 Bonds remaining after funding the Series 2009 Bond Reserve Account (if funded from Bond proceeds) shall be deposited in or credited to the Series 2009 Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2009 Bonds shall be issued in such principal amounts; shall bear interest at the rate of one percent (1%) per annum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Bond Purchase Agreement. The Series 2009 Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America.

Interest on the Series 2009 Bonds shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2009 Bond shall be issued in the form of two (2) bonds, fully registered to the Authority, with a record of advances and debt service schedules attached, representing the aggregate principal amounts of the Series 2009 Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2009 Bonds shall be exchangeable at the option and expense of the Registered Owners for other fully registered Bond or Bonds of the same series in an aggregate principal amount or amounts equal to the amounts of said Series 2009 Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Series 2009 Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Section 3.03. Execution of Bonds. The Series 2009 Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2009 Bonds shall cease to be such officer of the Issuer before the Series 2009 Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2009 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 Series 2009 Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bonds, substantially in the form set forth in Section 3.12 hereof, 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 Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2009 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 Series 2009 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2009 Bonds shall be conclusively deemed to have agreed that such Bonds shall

be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2009 Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the same.

The registered Series 2009 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 the Series 2009 Bonds or transferring the registered Series 2009 Bonds is exercised, the Series 2009 Bonds shall be delivered in accordance with the provisions of this Bond Legislation. The Series 2009 Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of the Series 2009 Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of the Series 2009 Bonds during the period commencing on the 15th day of the month next preceding an interest payment date, if any, on the Series 2009 Bonds or, in the case of any proposed redemption of the Series 2009 Bonds, next preceding the date of the selection of the portion of the Series 2009 Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bond Mutilated, Destroyed, Stolen or Lost. In case a bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new bond of the same series and of like tenor as the bond 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. The bond so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such bond shall have matured or be about to mature, instead of issuing a substitute bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2009 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, in the case of the Series 2009 Bonds only, from the Net Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2009 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2009 Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Parity Bonds. The payment of the debt service of the Series 2009 Bonds shall be secured by a first lien on the Net Revenues derived from the System, on parity with the lien on such Net Revenues in favor of the Holders of the Parity Bonds and senior and prior to the Subordinate Prior Bond. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Parity Bonds and the Series 2009 Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2009 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2009 Bonds to the original purchasers upon receipt of the documents set forth below:

- A. If other than the Authority, a list of the names in which the Series 2009 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;
- B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2009 Bonds to the original purchasers;
- C. An executed and certified copy of the Bond Legislation;
- D. Executed copy of the Bond Purchase Agreement;  
and
- E. The unqualified approving opinion of bond counsel on the Series 2009 Bonds.

Section 3.10. Form of Bonds. The text of the Series 2009 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 adopted prior to the issuance thereof:

(FORM OF A BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF WILLIAMSTOWN  
SEWER REVENUE BOND, SERIES 2009 A  
(WEST VIRGINIA SRF PROGRAM)

No. AR-1

\$\_\_\_\_,000

KNOW ALL MEN BY THESE PRESENTS: That CITY OF WILLIAMSTOWN, a municipal corporation, public corporation and political subdivision of the State of West Virginia in Wood County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of \_\_\_\_\_ HUNDRED THOUSAND DOLLARS (\$\_\_\_\_,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 2011, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative Fee (as defined in the hereinafter described Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 2011, as set forth on EXHIBIT B attached hereto.

This Bond shall bear interest at the rate of zero percent (0%) per annum beginning \_\_\_\_\_ 1, 2011. Principal and interest 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").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Bond Purchase Agreement by and among the Issuer, the Authority and the DEP, dated December \_\_, 2009.

This Bond is issued (i) to pay a portion of the costs of acquiring, constructing and equipping certain improvements and extensions to the existing public sewerage facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing public sewerage facilities of the Issuer, the improvements and extensions constructed by the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full

compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on November 3, 2009, and a Supplemental Resolution duly adopted by the Issuer on December \_\_, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON PARITY AS TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT WITH THE ISSUER'S (1) \$15,551 SEWER REVENUE BOND, SERIES 1987A, (2), \$659,637 SEWER REVENUE BOND, SERIES 1987A1, (3) \$230,282 SEWER REVENUE BOND, SERIES 2005A, AND (4) \$\_\_\_,\_\_\_ SEWER REVENUE BOND, SERIES 2009 B (ARRA PROGRAM) (COLLECTIVELY, THE "PARITY BONDS"), AND SENIOR AND PRIOR TO THE ISSUER'S \$169,539 SEWER REVENUE BOND, SERIES 1987B (THE "SUBORDINATE PRIOR BOND").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holder of the Parity Bonds, and senior and prior to the Subordinate Prior Bond, from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2009 Bond Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds that may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2009 Bond Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Parity Bonds; provided however, that so long as there exists in the Series 2009 Bond Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Parity Bonds, an amount at least equal to the requirement therefore, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owner of this

Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owner of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

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

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

IN WITNESS WHEREOF, CITY OF WILLIAMSTOWN 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 December 17, 2009.

[SEAL]

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Mayor

ATTEST:

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Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Series 2009 A Bond described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: December 17, 2009.

UNITED BANK, INC., as Registrar

By: \_\_\_\_\_  
Vice President

(Form of)

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$ <u>      .00</u>	<u>12/17/09</u>	(6) \$ <u>                    </u>	<u>                    </u>
(2) \$ <u>                    </u>	<u>                    </u>	(7) \$ <u>                    </u>	<u>                    </u>
(3) \$ <u>                    </u>	<u>                    </u>	(8) \$ <u>                    </u>	<u>                    </u>
(4) \$ <u>                    </u>	<u>                    </u>	(9) \$ <u>                    </u>	<u>                    </u>
(5) \$ <u>                    </u>	<u>                    </u>	(10) \$ <u>                    </u>	<u>                    </u>

TOTAL \$

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

BOND REGISTER

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF WILLIAMSTOWN  
SEWER REVENUE BOND, SERIES 2009 A  
(WEST VIRGINIA SRF PROGRAM)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. AR-1	\$ __,000	December 17, 2009

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

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

Signature of Registrar:

United Bank, Inc.

By: \_\_\_\_\_  
Vice President

(FORM OF B BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF WILLIAMSTOWN  
SEWER REVENUE BOND, SERIES 2009 B  
(ARRA PROGRAM)

No. BR-1

\$ \_\_,000

KNOW ALL MEN BY THESE PRESENTS: That CITY OF WILLIAMSTOWN, a municipal corporation, public corporation and political subdivision of the State of West Virginia in Wood County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of \_\_\_\_\_ HUNDRED THOUSAND DOLLARS (\$ \_\_,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 2011, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear interest at the rate of zero percent (0%) per annum beginning \_\_\_\_\_ 1, 2011. Principal and interest 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").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Bond Purchase Agreement by and among the Issuer, the Authority and the DEP, dated December \_\_, 2009.

This Bond is issued (i) to pay a portion of the costs of acquiring, constructing and equipping certain improvements and extensions to the existing public sewerage facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing public sewerage facilities of the Issuer, the improvements and

extensions constructed by the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on November 3, 2009, and a Supplemental Resolution duly adopted by the Issuer on December \_\_, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON PARITY AS TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT WITH THE ISSUER'S (1) \$15,551 SEWER REVENUE BOND, SERIES 1987A, (2), \$659,637 SEWER REVENUE BOND, SERIES 1987A1, (3) \$230,282 SEWER REVENUE BOND, SERIES 2005A, AND (4) \$\_\_\_\_,\_\_\_\_ SEWER REVENUE BOND, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM) (COLLECTIVELY, THE "PARITY BONDS"), AND SENIOR AND PRIOR TO THE ISSUER'S \$169,539 SEWER REVENUE BOND, SERIES 1987B (THE "SUBORDINATE PRIOR BOND").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holder of the Parity Bonds, and senior and prior to the Subordinate Prior Bond, from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2009 Bond Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds that may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2009 Bond Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum

amount payable in any year for principal of and interest, if any, on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Parity Bonds; provided however, that so long as there exists in the Series 2009 Bond Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Parity Bonds, an amount at least equal to the requirement therefore, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owner of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owner of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

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

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

IN WITNESS WHEREOF, CITY OF WILLIAMSTOWN 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 December 17, 2009.

[SEAL]

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Mayor

ATTEST:

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Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Series 2009 B Bond described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: December 17, 2009.

UNITED BANK, INC., as Registrar

By: \_\_\_\_\_  
Vice President



EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

BOND REGISTER

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF WILLIAMSTOWN  
SEWER REVENUE BOND, SERIES 2009 B  
(ARRA PROGRAM)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. BR-1	\$ __,000	December 17, 2009

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

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

Signature of Registrar:

United Bank, Inc.

By: \_\_\_\_\_  
Vice President

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Bond Purchase Agreement. The Bond Purchase Agreement, including all schedules and exhibits attached thereto, is hereby approved. The Series 2009 Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Bond Purchase Agreement. If not so authorized by previous Ordinance, the Mayor is specifically authorized and directed to execute the Bond Purchase Agreement in the form attached hereto as "EXHIBIT A" and made a part hereof, and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Bond Purchase Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed.

Section 3.12. Filing of Amended Schedule. Within 60 days following the Completion Date, the Issuer will file with the Authority and the DEP a schedule, the form of which will be provided by the DEP, setting forth the actual costs of construction of the Project and sources of funds therefore.

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

- (1) Revenue Fund (established by the Prior Ordinances);
- (2) Renewal and Replacement Fund (established by the Prior Ordinances); and
- (3) Series 2009 Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

- (1) Series 2009 Bond Sinking Fund; and
- (2) Series 2009 Bond Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

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

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Paying Agent: (i) the amounts required by the Prior Ordinances to pay interest on the First Lien Bonds; and (ii) the amount required to pay interest on the Series 2009 Bonds.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Paying Agent or the Commission: (i) the amounts required by the Prior Ordinances to pay principal on the First Lien Bonds; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2009 Bonds, remit to the Commission for deposit in the Series 2009 Bond Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2009 Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2009 Bond Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission the amounts: (i) to make reserve fund payments on the First Lien Bonds required by the Prior Ordinances; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2009 Bonds, if not fully funded upon issuance of the Series 2009 Bonds, remit to the Commission for deposit in the Series 2009 Bond Reserve Account, an amount equal to 1/120th of the Series 2009 Bond Reserve Requirement; provided that, no further payments shall be made into the Series 2009 Bond 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 2009 Bond Reserve Requirement.

(5) The Issuer shall next, on the first day of each month transfer from the Revenue Fund and remit to the Commission for deposit in the Subordinate Prior Bond Sinking Fund, the amount required to pay interest on the Subordinate Prior Bond on the next ensuing quarterly interest payment date.

(6) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Subordinate Prior Bond Sinking Fund, an amount equal to the amount of principal that will mature and become due on the Subordinate Prior Bond on the next ensuing quarterly principal payment date.

(7) The Issuer shall next, on the first day of each month, from the moneys remaining in the Revenue Fund, 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 VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Series 2009 Bond Sinking Fund shall be used only for the purpose of paying principal of and interest, if any, on the Series 2009 Bonds as the same shall become due. Moneys in the Series 2009 Bond Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 2009 Bonds as the same shall come due, when other moneys in the Series 2009 Bond Sinking Fund are insufficient therefore, and for no other purpose.

All investment earnings on moneys in the Series 2009 Bond Sinking Fund and the Series 2009 Bond Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited in the Revenue Fund and

applied in full, first to the next ensuing interest payment due, if any, on the Series 2009 Bonds, and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2009 Bond Reserve Account which result in a reduction in the balance therein below the Series 2009 Bond Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional bonds ranking on a parity with the Series 2009 Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve accounts in an amount equal to the requirement therefore.

The Issuer shall not be required to make any further payments into the Series 2009 Bond Sinking Fund or the Series 2009 Bond Reserve Account therein when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2009 Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

Principal, interest or reserve account payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Parity Bonds and the Series 2009 Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2009 Bond Sinking Fund and the Series 2009 Bond Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into the Series 2009 Bond Sinking Fund and the Series 2009 Bond Reserve Account shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Moneys in the Series 2009 Bond Sinking Fund and the Series 2009 Bond Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2009 Bond Sinking Fund, including the Series 2009 Bond Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2009 Bonds under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve account payments with respect to the Series 2009 Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. The Issuer shall also on the first day of each month deposit with the Commission the SRF Administrative Fee as set forth in the Schedule Y attached to the Bond Purchase Agreement.

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

D. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically deducted from the Revenue Fund and transferred to the Commission on the dates required.

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

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made

pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

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

## ARTICLE VI

### BOND PROCEEDS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of the Series 2009 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2009 Bonds, there shall be deposited with the Commission in the Series 2009 Bond Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 2009 Bond Reserve Account.

B. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2009 Bonds, such moneys shall be deposited with the Depository Bank in the Series 2009 Construction Trust Fund and applied solely to payment of costs of construction of the Project in the manner set forth in Section 6.02 and until so expended, are hereby pledged as additional security for the Series 2009 Bonds.

C. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2009 Bonds shall be used to fund the Series 2009 Bond Reserve Account, if not funded upon issuance of the Series 2009 Bonds, in an amount not to exceed the Series 2009 Bond Reserve Requirement; provided that, in no event shall more than 10% of the proceeds of the Series 2009 Bonds be deposited in the Series 2009 Bond Reserve Account. Any remaining proceeds thereafter shall be used as directed by the DEP.

Section 6.02. Disbursements from Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 2009 Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments of all Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2009 Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the DEP of the following:

(1) a completed and signed "Payment Requisition Form," a form of which is attached to the Bond Purchase Agreement as Exhibit C in compliance with the construction schedule; and

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

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

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

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

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

Pending such application, moneys in the Series 2009 Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by the Holders of the Series 2009 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2009 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2009 Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2009 Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2009 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2009 Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Parity Bonds. The payment of the debt service of the Series 2009 Bonds shall be secured by a first lien on the Net Revenues derived from the System, on

parity with the lien on such Net Revenues in favor of the Holders of the Parity Bonds. The Net Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Parity Bonds and the Series 2009 Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Bond Purchase Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved and described in the Final Order of the Public Service Commission of West Virginia entered December \_\_, 2009, in Case No. 09-1062-S-CN, and such rates are hereby enacted.

So long as the Series 2009 Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Bond Purchase Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2009 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Bond Purchase Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Bond Purchase Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of the System, or any part thereof, except as provided in the Prior Ordinances. Additionally, so long as the Series 2009 Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the DEP, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2009 Bond, immediately be remitted to the Commission for deposit in the Series 2009 Bond Sinking Fund, 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 of and interest, if any, on the Series 2009 Bonds. Any balance remaining after the payment of the Series 2009 Bonds and interest, if any, thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefore, 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 Ordinance, 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 Ordinance duly enacted, 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, be remitted by the Issuer to the Commission for deposit in the Renewal and Replacement Fund. Such payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any obligations whatsoever payable from the revenues of the System that rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2009 Bonds. All obligations issued by the Issuer after the issuance of the Series 2009 Bonds that are payable from the revenues of the System, except such additional parity bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on, pledge and source of and security for payment from such revenues and in all other respects, to the Series 2009 Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2009 Bonds, and the interest thereon, if any, upon any or all of the income and revenues of the System pledged for payment of the Series 2009 Bonds and the interest thereon, if any, in this Bond Legislation, or upon the System or any part thereof.

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

Section 7.07. Parity Bonds. So long as the Parity Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. Additionally, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2009 Bonds pursuant to this Bond Legislation, except with the prior written consent of DEP and the Authority under the conditions and in the manner herein provided (unless less restrictive than the provisions of the Prior Ordinances).

All Parity Bonds issued hereunder shall be on parity in all respects with the Series 2009 Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the design, acquisition, or construction of extensions and improvements to the System or refunding any outstanding Bonds, 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, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

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

(3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 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 and approved by the Public Service Commission of West Virginia, 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 Independent Certified Public Accountants, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

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

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

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on revenues of the System is subject to the prior and superior liens of the Series 2009 Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2009 Bonds.

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

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the cost of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as it may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

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

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

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. The Issuer shall maintain separate control accounting records. 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 that may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Authority and the DEP, or any other original purchasers of the Series 2009 Bonds, and shall mail in each year to any Holder or Holders of the Series 2009 Bonds, requesting the same, an annual report containing the following:

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

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this

Bond Legislation, and the status of all said funds and accounts.

(C) The amount of any bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and, to the extent legally required, in compliance with the applicable OMB Circular or any successor thereto, and the Single Audit Act, or any successor thereto) and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to the Holder of the Series 2009 Bond, and shall submit said report to the Authority and the DEP, or any other original purchasers of the Series 2009 Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance, and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

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

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

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in EXHIBIT E of the Bond Purchase Agreement or as promulgated from time to time.

Section 7.09. Rates. Prior to the issuance of the Series 2009 Bonds, equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of 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 the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2009 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 Bonds, including the Parity Bonds; provided that in the event that amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2009 Bond Reserve Account and any reserve accounts for obligations on a parity with the Series 2009 Bond, including the Parity Bonds, are funded at least at the requirement therefore, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2009 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 Bonds, including the Parity Bonds. In any event, the Issuer shall not reduce the rates or charges for services described in Section 7.04.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and enact by Ordinance a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the DEP within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefore in such budget without a written finding and recommendation by a professional engineer which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a Ordinance duly enacted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all Ordinances authorizing increased expenditures for operation and maintenance to the Authority and the DEP and to any Holder of any Bonds, within 30 days of adoption thereof, and shall make available such budgets and all Ordinances authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority and the DEP and to any Holder of any Bonds, or anyone acting for and on behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of construction of

the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Bond Purchase Agreement and forward a copy of such report to the Authority and the DEP by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer shall obtain a certificate of the Consulting Engineers in the form attached to the Bond Purchase Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the DEP and the Authority, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the DEP and the Authority is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the DEP and the Authority covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, the DEP 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 Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Bond Purchase Agreement, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulation, to the DEP when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all State and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the Bond Purchase Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the 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. If the water facilities are not owned by the Issuer, the Issuer shall enter into a termination agreement with the water provider, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2009 Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

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

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

(3) 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 100% of the construction contract, if any, and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, if the System facilities are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

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

(6) FIDELITY BONDS will be provided for every officer, member and employee of the Issuer having custody of the

revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

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

The Issuer shall also require all contractors engaged in the construction of the Project to carry such 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, provided that the amounts and terms of such coverage are satisfactory to the DEP and the Authority. In the event the Bond Purchase Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear. The Issuer shall verify such insurance prior to commencement of construction.

Section 7.16. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Division of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Division of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefore.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17. Completion of Construction; Permits and Orders. The Issuer will cause the Project to be constructed as promptly as possible and operate and

maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer has obtained all permits required by state and federal laws for the construction of the Project and operation of the System, all orders and approvals from the Public Service Commission of West Virginia and the Council necessary for the construction of the Project and the operation of the System and all approvals for issuance of the Series 2009 Bond required by state law, with all requisite appeal periods having expired without successful appeal.

Section 7.18. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2009 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due, on the Series 2009 Bonds during the term thereof is, under the terms of the Series 2009 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property, or borrowed money, used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2009 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2009 Bonds during the term thereof is, under the terms of the Series 2009 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property, or borrowed money, used or to be used for a Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2009 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2009 Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of the portion of the Project to which such Private Business Use is related. All of the foregoing shall be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% or \$5,000,000 of the Net Proceeds of the Series 2009 Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to person other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2009 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. If required, the Issuer will timely file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2009 Bonds and the interest thereon including, without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 2009 Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

Section 7.19. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2009 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2009 Bonds, and shall be on a parity, as to the Series 2009 Bonds with the statutory mortgage lien in favor of the Holders of the Parity Bonds.

Section 7.20. Compliance with Bond Purchase Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms, conditions and requirements of the Bond Purchase Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with copies of all documents submitted to the Authority.

The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the DEP or other state, federal or local bodies in regard to the construction of the Project and the operation, maintenance and use of the System.

Section 7.21. Securities Laws 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 7.22. Contracts; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2009 Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the DEP and the Authority for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2009 Bonds held in "contingency" as set forth in the schedule attached to the certificate of the Consulting Engineer. The Issuer

shall also obtain the written approval of the DEP before expending any proceeds of the Series 2009 Bonds made available due to bid or construction or project underruns.

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

## ARTICLE VIII

### INVESTMENTS; USE OF PROCEEDS

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

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank 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, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest, if any, on the Series 2009 Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate as to Use of Proceeds; Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2009 Bonds as a condition to issuance of the Series 2009 Bond. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2009 Bonds as may be necessary in order to maintain the status of the Series 2009 Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2009 Bonds that would cause any bonds or notes, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority or DEP, as the case may be, from which the proceeds of the Series 2009 Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority or DEP, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2009 Bonds and any additional information requested by the Authority.

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2009 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 2009 Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2009 Bonds set forth in this Bond Legislation, any Supplemental Resolution or in the Series 2009 Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, 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; or

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owner including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owner of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owner; provided that, all rights and remedies of the Holders of the Series 2009 Bonds shall be on parity with the Holders of the Parity Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

the same right to secure the further appointment of a receiver upon any such subsequent default.

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

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

## ARTICLE X

### PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay, or there shall otherwise be paid, to the Holders of the Series 2009 Bonds, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues, the pledge of future grant proceeds and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2009 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2009 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2009 Bonds, no material modification or amendment of this Ordinance, or of any

Ordinance amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owner of the Series 2009 Bonds shall be made without the consent in writing of the Registered Owner of the Series 2009 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2009 Bonds or the rates of interest, if any, thereon, or in the principal amounts thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest, if any, out of the funds herein respectively pledged therefore without the consent of the Registered Owners thereof. No amendment or modification shall be made that would reduce the percentage of the principal amounts of the Series 2009 Bonds, required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholders as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest, if any, on the Series 2009 Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owner of the Series 2009 Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any court of competent jurisdiction should hold any section, paragraph, clause or provision of this Ordinance invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution, or the Series 2009 Bonds.

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

Section 11.05. Conflicting Provisions Repealed; Prior Ordinances. All orders or Ordinances, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive), so long as the Prior Bonds are outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and at 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. Public Notice of Proposed Financing. Prior to making formal application to the Public Service Commission of West Virginia for a certificate of public convenience and necessity, the Recorder of the Governing Body shall have caused to be published in a newspaper of general circulation within or in the immediate vicinity of the City of Williamstown, a Class II legal advertisement stating:

- (a) The maximum amounts of the Series 2009 Bonds to be issued;
- (b) The maximum interest rates and terms of the Series 2009 Bonds originally authorized hereby;
- (c) The public service properties to be acquired and the cost of the same;
- (d) The maximum anticipated rates which will be charged by the Issuer; and
- (e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the Public Service Commission of West Virginia.

Section 11.08. Effective Date. This Ordinance shall take effect immediately upon enactment.

Enacted this 3<sup>rd</sup> day of November, 2009.

CITY OF WILLIAMSTOWN

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

CERTIFICATION

Certified a true copy of a Ordinance duly enacted by the City Council of the CITY OF WILLIAMSTOWN on the 3<sup>rd</sup> day of November, 2009.

Dated: December 17, 2009.

[SEAL]

\_\_\_\_\_  
Recorder

Enacted this 3<sup>rd</sup> day of November, 2009.

CITY OF WILLIAMSTOWN

By:   
Mayor

CERTIFICATION

Certified a true copy of a Ordinance duly enacted by the City Council of  
the CITY OF WILLIAMSTOWN on the 3<sup>rd</sup> day of November, 2009.

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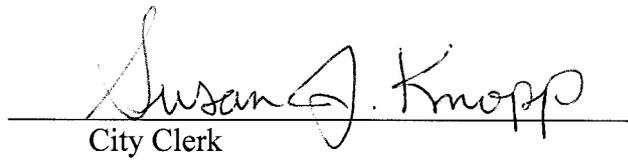
  
City Clerk

EXHIBIT A

ARRA Assistance Agreement included in bond transcript at Tab 3.



CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS  
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM)  
AND  
SERIES 2009 B (ARRA PROGRAM)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNTS, DATE, MATURITY DATE, INTEREST RATES, PAYMENT SCHEDULES, SALE PRICES AND OTHER TERMS OF THE CITY OF WILLIAMSTOWN, SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM) AND SERIES 2009 B (ARRA PROGRAM); AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF THE SERIES 2009 BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; APPROVING AND RATIFYING THE ARRA ASSISTANCE AGREEMENT WITH RESPECT TO THE SERIES 2009 BONDS; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BOND.

WHEREAS, the City Council (the "Governing Body") of the City of Williamstown (the "Issuer") has duly and officially enacted a Bond Ordinance on November 3, 2009 (the "Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF WILLIAMSTOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$1,750,000 IN AGGREGATE PRINCIPAL AMOUNT OF ITS SEWER REVENUE BONDS, SERIES 2009; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNER OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A BOND PURCHASE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR

THE TERMS AND PROVISIONS OF SUCH BONDS; AND  
ENACTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Ordinance provides for the issuance of the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Series 2009 B (ARRA Program) of the Issuer, in the aggregate principal amounts not to exceed \$1,750,000 (collectively, the "Series 2009 Bonds"), and authorized the execution and delivery of an ARRA Assistance Agreement (the "Agreement") relating to the Series 2009 Bonds, including all schedules and exhibits attached thereto, by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Division of Environmental Protection ("DEP"), all in accordance with Chapter 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"); and in the Ordinance it is provided that the exact principal amounts, date, maturity date, interest rates, payment schedules, sale prices and other terms of the Bonds should be established by a supplemental resolution, and that other matters relating to the Bonds be therein provided for;

WHEREAS, the Agreement for the sale of the Series 2009 Bonds has been presented to the Issuer at this meeting;

WHEREAS, the Series 2009 Bonds are proposed to be purchased by the Authority pursuant to the Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Agreement be approved and ratified, that the exact principal amounts, date, maturity date, interest rates, payment schedules, sale prices and other terms of the Series 2009 Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Series 2009 Bonds be herein provided for.

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

Section 1. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the following bonds of the Issuer:

Sewer Revenue Bond, Series 2009A (West Virginia SRF Program), of the Issuer, originally represented by a single bond, numbered AR-1, in the original principal amount of \$800,000. The Series 2009 A Bond shall be dated the date of delivery, shall finally mature December 1, 2049, and shall bear interest at the rate of 0% per annum, plus an administrative fee of 1% per annum. The principal of and interest on the Series 2009 A Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2011, in the amounts set forth in the Schedule Y attached to the Agreement and incorporated in and made a

part of the Series 2009 A Bond. The Series 2009 A Bond shall be subject to redemption upon the written consent of the Authority and DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the Agreement, so long as the Authority shall be the Registered Owner of the Series 2009 A Bond.

Sewer Revenue Bond, Series 2009B (ARRA Program), of the Issuer, originally represented by a single bond, numbered BR-1, in the original principal amount of \$660,000. The Series 2009 B Bond shall be dated the date of delivery, shall finally mature June 1, 2021, and shall bear interest at the rate of -3% per annum. The principal of and interest on the Series 2009 B Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2011, in the amounts set forth in the Schedule Y attached to the Agreement and incorporated in and made a part of the Series 2009 B Bond. The Series 2009 B Bond shall be subject to redemption upon the written consent of the Authority and DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the Agreement, so long as the Authority shall be the Registered Owner of the Series 2009 B Bond.

Section 2. All other provisions relating to the Series 2009 Bonds and the text of the Series 2009 Bonds shall be in substantially the form provided in the Ordinance.

Section 3. The Issuer hereby ratifies, approves and accepts the Agreement, including all schedules and exhibits attached thereto, a copy of which is incorporated herein by reference and the form of which is attached hereto and incorporated herein as Exhibit A, and the execution and delivery of the Agreement by the Mayor and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed. The Issuer hereby affirms all covenants and representations made in the Agreement and in the applications to DEP and the Authority.

The price of the Series 2009 A Bond shall be 100% of par value, bearing interest at the rate of zero percent (0%) per annum, plus an administrative fee of one percent (1%) per annum, provided that the proceeds of the Series 2009 A Bond shall be advanced from time to time as requisitioned by the Issuer. The price of the Series 2009 B Bond shall be 100% of par value, bearing interest at the rate of negative three percent (-3%) per annum, with principal forgiveness, provided that the proceeds of the Series 2009 B Bond shall be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer hereby appoints and designates United Bank, Inc., Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Series 2009 Bonds under the Ordinance and approves and accepts the Registrar's Agreement to be dated the date of delivery of the Series 2009 Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed and approved.

Section 5. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Commission"), to serve as Paying Agent for the

Series 2009 Bonds under the Ordinance.

Section 6. The Issuer hereby appoints and designates Williamstown Bank, Inc. to serve as Depository Bank for the Revenue Fund, the Renewal and Replacement Fund and the Series 2009 Construction Trust Fund.

Section 7. The proceeds of the Series 2009 Bonds, as advanced from time to time, shall be deposited in or credited to the Series 2009 Construction Trust Fund, as received by the Issuer for payment of costs of the Project, including costs of issuance of the Series 2009 Bonds.

Section 8. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Series 2009 Bonds hereby and by the Ordinance approved and provided for, to the end that the Series 2009 Bonds may be delivered to the Authority pursuant to the Agreement on December 9, 2009.

Section 9. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Series 2009 Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

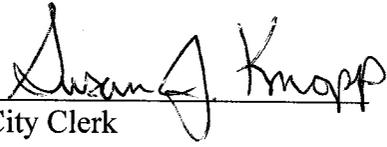
Section 10. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to invest all moneys in such money market accounts until further directed in writing by the Issuer. Moneys in the Sinking Funds and the Reserve Accounts for the Series 2009 Bonds shall be invested by the Commission in the West Virginia Consolidated Fund.

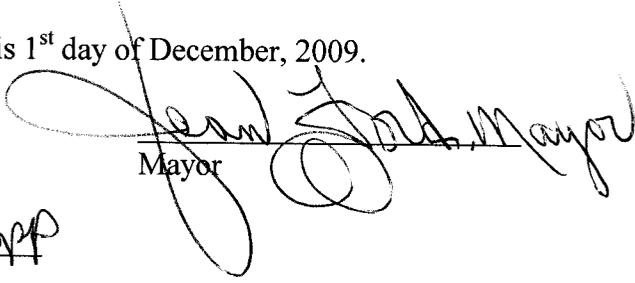
Section 11. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project and the Mayor is hereby authorized and directed to execute and deliver all such contracts.

Section 19. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 20. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 1<sup>st</sup> day of December, 2009.

  
City Clerk

  
Mayor

CERTIFICATION

Certified as a true copy of a Supplemental Resolution duly adopted by the City Council of City of Williamstown on the 1<sup>st</sup> day of December, 2009.

Dated as of the 9<sup>th</sup> day of December, 2009.

[SEAL]

  
City Clerk



SRF-ARRA/M  
(11/09)

ARRA ASSISTANCE AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND ARRA ASSISTANCE AGREEMENT (the "ARRA Assistance Agreement"), made and entered into in several counterparts, by and among the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), the WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION (the "DEP"), and the local government designated below (the "Local Government").

CITY OF WILLIAMSTOWN (C-544335-02/2007S-992)  
(Local Government)

W I T N E S S E T H:

WHEREAS, the United States Congress under Title VI of the federal Clean Water Act, as amended (the "Clean Water Act"), has provided for capitalization grants to be awarded to states for the express purpose of establishing and maintaining state water pollution control revolving funds for the planning, design, construction, acquisition and/or improvement of wastewater treatment facilities;

WHEREAS, the United States Congress has provided additional capitalization grant funding under the Clean Water Act through the American Recovery and Reinvestment Act of 2009 (the "ARRA");

WHEREAS, pursuant to the provisions of Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a state water pollution control revolving fund program (the "Program") to direct the distribution of loans to particular local governments pursuant to the Clean Water Act and the ARRA;

WHEREAS, under the Act the DEP is designated the instrumentality to enter into capitalization agreements with the United States Environmental Protection Agency ("EPA") to accept capitalization grant awards (U.S. General Services Administration; Catalog of Federal Domestic Assistance, 32nd Edition § 66.458 (1998)) and DEP has been awarded capitalization grants to partially fund the Program;

WHEREAS, the ARRA provides that at least fifty percent (50%) of the funds provided through the capitalization grant be provided as negative interest loans or principal forgiveness (the "ARRA Assistance");

WHEREAS, under the Act and under the direction of DEP, the Authority has established a permanent perpetual fund known as the "West Virginia Water Pollution Control Revolving Fund" (hereinafter the "Fund");

WHEREAS, pursuant to the Act, the Authority and DEP are empowered to make loans from the Fund to local governments for the acquisition or construction of wastewater treatment projects by such local governments, all subject to such provisions and limitations as are contained in the Clean Water Act, the ARRA and the Act;

WHEREAS, the Local Government constitutes a local government as defined by the Act;

WHEREAS, the Local Government is included on the DEP State Project Priority List and the Intended Use Plan and has met DEP's pre-application requirements for the Program;

WHEREAS, the Local Government is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a wastewater treatment project and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by revenue bonds issued by the Local Government;

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

WHEREAS, the Local Government has completed and filed with the Authority and DEP an Application for a Loan with attachments and exhibits and an Amended Application for a 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 the Fund having available sufficient funds therefor, the Authority and DEP are willing to lend the Local Government the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Local Government with

moneys held in the Fund, subject to the Local Government's satisfaction of certain legal and other requirements of the Program.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Local Government, DEP and the Authority hereby agree as follows:

## ARTICLE I

### Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "fund," "local government," and "project" have the definitions and meanings ascribed to them in the Act, the ARRA, or in the SRF Regulations.

1.2 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any successor thereto.

1.3 "Loan" means the loan to be made by the Authority and DEP to the Local Government through the purchase of Local Bonds, as hereinafter defined, pursuant to this ARRA Assistance Agreement.

1.4 "Local Act" means the official action of the Local Government required by Section 4.1 hereof, authorizing the Local Bonds.

1.5 "Local Bonds" means the revenue bonds to be issued by the Local Government pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority with money held in the Fund, all in accordance with the provisions of this ARRA Assistance Agreement.

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

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

1.8 "Program" means the wastewater treatment facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Clean Water Act and administered by DEP.

1.9 "Project" means the wastewater treatment facility project hereinabove referred to, to be constructed or being constructed by the Local Government in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Local Government in whole or in part with the proceeds of bond anticipation notes or other interim financing, which is to be paid in whole or in part with the net proceeds of the Local Bonds.

1.10 "SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

1.11 "System" means the wastewater treatment facility owned by the Local Government, 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 ARRA Assistance 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 Local Government by the Consulting Engineers, the DEP and Authority having found, to the extent applicable, that the Project is consistent with the applicable provisions of the Program.

2.2 Subject to the terms, conditions and provisions of this ARRA Assistance Agreement and the Local Act, the Local Government 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 Local Government 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 Local Government, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property is approved by DEP and the Authority.

2.4 The Local Government agrees that the Authority and DEP and their respective 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 Local Government further agrees that the Authority and DEP and their respective duly authorized agents shall, prior to, during and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and DEP with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Local Government 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 Local Government shall permit the Authority and DEP, acting by and through their Directors or 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 Local Government shall submit to the Authority and DEP 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 Local Government agrees that it will permit the Authority and DEP and their respective agents to have access to the records of the Local Government 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 Local Government shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Local Government shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and DEP and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Local Government, the Local Government or (at the option of the Local Government) 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 Local Government, 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 Local Government on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Local Government shall provide and maintain competent and adequate engineering services satisfactory to the Authority and DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, DEP and the Local Government at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Government shall require the Consulting Engineers to submit Record Drawing, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Local Government shall notify DEP in writing of such receipt. The Local Government shall submit a Performance Certificate, the form of which is attached hereto as Exhibit A, and being incorporated herein by reference, to DEP within 60 days of the end of the first year after the Project is completed.

2.10 The Local Government shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator(s) to operate the System during the entire term of this ARRA Assistance Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 50% completion stage.

2.11 The Local Government hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Authority, DEP 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 Local Government, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and forward a copy by the 10th of each month to DEP and the Authority.

2.13 The Local Government, during construction of the Project, shall complete Payment Requisition Forms, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward such forms to DEP in compliance with the Local Government's construction schedule.

2.14 The Governmental Agency shall serve the additional customers at the location(s) as set forth in Schedule X. The Governmental Agency shall not reduce the amount of additional customers served by the project without the prior written approval of the WDA Board. Following completion of the Project the Governmental Agency shall certify to the Authority the number of customers added to the System.

2.15 The Governmental Agency shall perform an annual maintenance audit which maintenance audit shall be submitted to the WDA and the Public Service Commission of West Virginia.

### ARTICLE III

#### Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and DEP to make the Loan is subject to the Local Government's fulfillment, to the satisfaction of the Authority and DEP, 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 Local Government shall have delivered to the Authority and DEP a report listing the specific purposes for which the proceeds of the Loan will be expended and the procedures as to the disbursement of loan proceeds, including an estimated monthly draw schedule;

(b) The Local Government shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this ARRA Assistance Agreement;

(c) The Local Government 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;

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

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

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

(g) The Local Government shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

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

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

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

3.2 Subject to the terms and provisions of this ARRA Assistance Agreement, the rules and regulations promulgated by the Authority and DEP, including the SRF Regulations, or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government including rules, regulations and procedures promulgated under the Clean Water Act and/or the ARRA, it is hereby agreed that the Authority shall make the Loan to the Local Government and the Local Government shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Local Government 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 ARRA Assistance Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Government 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, DEP and the Local Government. 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 ARRA Assistance Agreement by the Authority or such later date as is agreed to in writing by DEP.

3.5 The Local Government understands and acknowledges that it is one of several local governments which have applied to the Authority and DEP for loans from the Fund to finance wastewater treatment projects and that the obligation of the Authority to make any such loan is subject to the Local Government's fulfilling all of the terms and conditions of this ARRA Assistance Agreement on or prior to the Date of Loan Closing and to the requirements of the Program. The Local Government specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Fund to purchase all the Local Bonds and that, prior to such purchase, the Authority may purchase the bonds of other local governments set out in the State Project Priority List, as defined in the SRF Regulations. The Local Government further specifically recognizes that all loans will be originated in conjunction with the SRF Regulations and with the prior approval of DEP.

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions regarding the public release and audit requirements established by federal and State regulations as set forth in Exhibit E attached hereto at such times as are set forth therein.

#### ARTICLE IV

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

4.1 The Local Government shall, as one of the conditions of the Authority and DEP to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Local Government in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows:

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

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

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

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System (or eliminating any deficiencies in the Reserve Account, if applicable); 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 Local Government has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

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

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

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

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

(iv) That, except as otherwise required by State law or the Regulations, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, provided that the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the Local Bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

(v) That the Local Government shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the prior written consent of the Authority and DEP; 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 Local Government 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 Local Government will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Local Government 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 and all rights as set forth in Section 5 of the Act;

(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 Local Government will not grant any franchise to provide any services which would compete with the System;

(xi) That the Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

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

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

(xiv) That the proceeds of the Local Bonds, advanced from time to time, except for accrued interest and capitalized interest, if any, must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Local Government and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing of such Local Government, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and DEP, 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 Local Government may authorize redemption of the Local Bonds with 30 days written notice to the Authority;

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

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

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Local Government will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Local Government shall have obtained the certificate of the Consulting Engineers to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and DEP is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

(xx) That the Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Local Government, then the Local Government shall enter into a termination agreement with the water provider; and

(xxi) That the Local Government shall submit all proposed change orders to the DEP for written approval. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule A attached to the certificate of the Consulting Engineer. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

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

4.2 The Loan shall be secured by the pledge and assignment by the Local Government, as effected by the Local Act, of the fees, charges and other revenues of the Local Government from the System.

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the DEP monthly as required by the Local Government to pay Costs of the Project, provided, however, if the proceeds of the Local Bonds will be used to repay an interim financing, the proceeds will be advanced on a schedule mutually agreeable to the Local Government, the DEP and the Authority. The Local Bonds shall not bear interest during the construction period but interest shall commence accruing on the completion date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Local Bonds shall be as set forth on Schedule Y 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.

4.4 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 Local Government. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

4.5 As provided by the SRF Regulations, the Local Government agrees to pay from time to time, if required by the Authority and DEP, the Local Government's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be determined by the Authority and shall include, without limitation, Program expenses, legal fees paid by the Authority and fees

paid to the trustee and paying agents for any bonds or notes to be issued by the Authority for contribution to the Fund and the fees and expenses of any corporate trustee for the Fund.

4.6 The obligation of the Authority to make any loans shall be conditioned upon the availability of moneys in the Fund in such amount and on such terms and conditions as, in the sole judgment of the Authority, will enable it to make the Loan.

## ARTICLE V

### Certain Covenants of the Local Government; Imposition and Collection of User Charges; Payments To Be Made by Local Government to the Authority

5.1 The Local Government hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this ARRA Assistance Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this ARRA Assistance Agreement, the Local Government hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this ARRA Assistance Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to this ARRA Assistance Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Local Government hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Local Government, the Authority may exercise any or all of the rights and powers granted under Section 5 of the Act, including, without limitation, the right to impose, enforce and collect charges of the System.

## ARTICLE VI

### Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by the Local Government in the terms and covenants of this ARRA Assistance Agreement, and the Local Government hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this ARRA Assistance Agreement.

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

6.3 The Local Government hereby agrees to give the Authority and DEP prior written notice of the issuance by it of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

## ARTICLE VII

### Miscellaneous

7.1 Schedules X and Y shall be attached to this ARRA Assistance Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Local Government supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

7.2 If any provision of this ARRA Assistance 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 ARRA Assistance Agreement, and this ARRA Assistance Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.3 This ARRA Assistance 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 ARRA Assistance Agreement.

7.4 No waiver by any party of any term or condition of this ARRA Assistance 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 ARRA Assistance Agreement.

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

7.6 By execution and delivery of this ARRA Assistance Agreement, notwithstanding the date hereof, the Local Government 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.

7.7 This ARRA Assistance Agreement shall terminate upon the earlier of:

(i) written notice of termination to the Local Government from either the Authority or DEP;

(ii) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by DEP if the Local Government has failed to deliver the Local Bonds to the Authority;

(iii) termination by the Authority and DEP pursuant to Section 6.2 hereof;

(iv) unless waived or modified by Schedule X, payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Local Government to the Authority or DEP; provided that the amount of the Loan made under this ARRA Assistance Agreement in any succeeding fiscal year is contingent upon funds being appropriated by the State legislature or otherwise being available to make the Loan. In the event funds are not appropriated or otherwise available to make all of the Loan, the responsibility of the Authority and DEP to make all the Loan is terminated; provided further that the obligation of the Local Government to repay the outstanding amount of the Loan made by the Authority and DEP is not terminated due to such non-funding on any balance of the Loan. The DEP agrees to use its best efforts to have the amount contemplated under this ARRA Assistance Agreement included in its budget. Non-appropriation or non-funding of the Loan shall not be considered an event of default under this ARRA Assistance Agreement; or

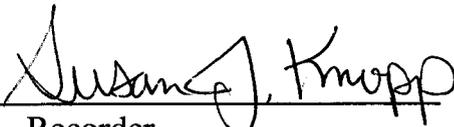
(v) provided that the Authority and DEP reserve the right to terminate this ARRA Assistance Agreement upon five days written notice if the Local Bonds are not issued and the Project is not under written contract by January 28, 2010.

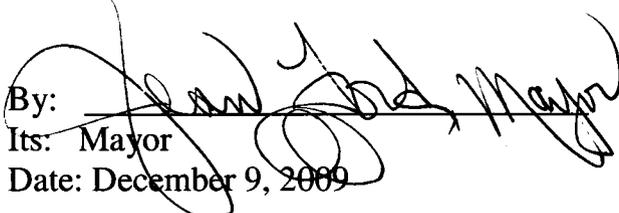
IN WITNESS WHEREOF, the parties hereto have caused this ARRA Assistance Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

CITY OF WILLIAMSTOWN

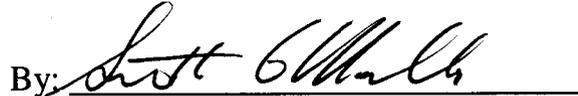
(SEAL)

Attest:

  
Its: Recorder

By:   
Its: Mayor  
Date: December 9, 2009

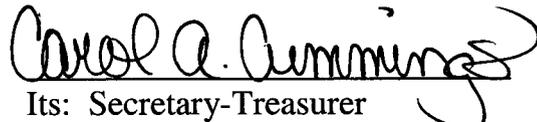
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
DIVISION OF WATER AND WASTE MANAGEMENT

By:   
Its: Acting Director  
Date: December 9, 2009

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

Attest:

  
Its: Secretary-Treasurer

By:   
Its: Executive Director  
Date: December 9, 2009

{C1640532.1}

EXHIBIT A

FORM OF PERFORMANCE CERTIFICATE

[To Be Provided By DEP]

EXHIBIT B

MONTHLY FINANCIAL REPORT

Name of Local Government \_\_\_\_\_

Name of Bond Issue(s) \_\_\_\_\_

Type of Project \_\_\_\_\_ Water \_\_\_\_\_ Wastewater \_\_\_\_\_

Fiscal Year \_\_\_\_\_ Report Month \_\_\_\_\_

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

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

## INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

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

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

EXHIBIT C

PAYMENT REQUISITION FORM

(All Copies to Be Provided by DEP for Each Project)

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

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

(Name of Bonds)

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

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

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

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP 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 attached hereto as Exhibit

A, and my firm<sup>1</sup> has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) the Issuer has received the Buy American Certificate from each contractor; (x) as of the effective date thereof<sup>2</sup>, the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the ARRA Assistance Agreement; (xi) 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 the DEP; and (xii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

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

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

[SEAL]

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

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

## EXHIBIT E

### SPECIAL CONDITIONS

A. PUBLIC RELEASE REQUIREMENT – The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, groundbreaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) – Effective October 1, 2003, the Local Government that receives \$500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

C. BUY AMERICAN CERTIFICATION – The Local Government shall cause the contractor(s) to comply with, and provide certification of, the Buy American provisions of the ARRA in accordance with final guidance from the EPA.

D. ASSET MANAGEMENT – The Local Government shall develop and implement an asset management plan in accordance with guidelines issued by DEP and is approved by DEP. New systems shall submit the asset management plan to DEP when the Project is complete. Existing systems shall submit the asset management plan to DEP within six months following completion of the Project.

E. CONTRACTS – The Local Government shall enter into contracts or commence construction by January 28, 2010.

F. LOGO – The Local Government must display the ARRA logo in a manner that informs the public that the project is an ARRA investment.

G. LOBBYING - The Local Government shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying and shall submit certification and disclosure forms as required by DEP.

H. PURCHASING REQUIREMENTS – The Local Government shall comply with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42

U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

I. **SUSPENSION AND DEBARMENT** – The Local Government shall comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled “Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons). To the extent required by DEP, the Local Government shall provide certifications as to compliance.

J. **REPORTING** – The Local Government shall comply with all requests for data related to the use of the funds provided under this agreement, including the information required in section 1512 of ARRA when requested by DEP.

K. **INSPECTOR GENERAL REVIEWS** – The Local Government shall allow any appropriate representative of the Office of US Inspector General to (1) examine its records relating to the Project and this ARRA Assistance Agreement and (2) interview any officer or employee of the Local Government.

L. **FALSE CLAIMS** – The Local Government must promptly refer to EPA’s Inspector General any credible evidence that a principal, employee, agent, sub-grantee contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this ARRA Assistance Agreement.

M. **LIMIT ON FUNDS** – The Local Government shall not use funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

N. **WAGE RATES** – The Local Government shall require that all laborers and mechanics employed by its contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 32 of title 40, United States Code. The Local Government must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL guidance and regulations implementing wage rate requirements applicable to ARRA funds.

O. OFFICE OF MANAGEMENT AND BUDGET (OMB) GUIDANCE – The Local Government acknowledges and agrees that this ARRA Assistance is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of Management and Budget, including the Initial Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued on February 18, 2009 and available on [www.recovery.gov](http://www.recovery.gov), and any subsequent guidance documents issued by OMB.

P. DISADVANTAGED BUSINESS ENTERPRISE – Pursuant to 40 CFR, Section 33.301, the Local Government agrees to make good faith efforts whenever procuring construction, equipment, services and supplies, and to require that prime contractors also comply. The Local Government shall provide DEP with MBE/WBE participation reports semi-annually.

Q. CIVIL RIGHTS – The Local Government shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements. The Local Government shall also comply with Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

R. BOND DESIGNATION – Each Local Bond funded by ARRA funds shall be designated “Series [2009] B” and shall contain “(WVCWSRF Program/ARRA)” in the bond name.

S. USER RATES – The Local Government shall covenant that it will not reduce its approved or enacted customer rates for at least eighteen months after completion of the Project or until such time as a cost of service study has been completed establishing the actual operation and maintenance expenses.

EXHIBIT F

MONTHLY PAYMENT FORM

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

Re: [Name of bond issue]

Ladies and Gentlemen:

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

Sinking Fund:

Interest \$

Principal \$

Total: \$

Reserve Account: \$

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

[Name of Local Government]

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

Enclosure: copy of check(s)

EXHIBIT G

OPINION OF BOND COUNSEL FOR LOCAL GOVERNMENT

[To Be Dated as of Date of Loan Closing]

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

West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street  
Charleston, WV 25304

Ladies and Gentlemen:

We are bond counsel to \_\_\_\_\_ (the "Local Government"), a

\_\_\_\_\_.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a ARRA assistance agreement dated \_\_\_\_\_, \_\_\_\_\_, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the issue of a series of revenue bonds of the Local Government, dated \_\_\_\_\_, \_\_\_\_\_ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the ARRA Assistance Agreement. The Local Bonds are issued in the principal amount of \$\_\_\_\_\_, in the form of one bond, registered as to principal and interest to the Authority, with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning \_\_\_\_\_ 1, \_\_\_\_\_, and ending \_\_\_\_\_ 1, \_\_\_\_\_, all as set forth in the "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Local Bonds.

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

We have also examined the applicable provisions of \_\_\_\_\_ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond duly adopted or enacted by the Local Government on \_\_\_\_\_, as supplemented by the supplemental

resolution duly adopted by the Local Government on \_\_\_\_\_ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the ARRA Assistance Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the ARRA Assistance 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 ARRA Assistance Agreement has been duly authorized by and executed on behalf of the Local Government and is a valid and binding special obligation of the Local Government, enforceable in accordance with the terms thereof.

2. The ARRA Assistance Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Local Government without the consent of the Authority and the DEP.

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

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

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

6. The Local Bonds are, by statute, exempt \_\_\_\_\_, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

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

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

Very truly yours,

## SCHEDULE X

### DESCRIPTION OF LOCAL BONDS

- A. Series A Bonds (CWSRF Base Program)  
Principal Amount of Local Bonds \$800,000  
Purchase Price of Local Bonds \$800,000

The Local Bonds shall bear no interest. Commencing September 1, 2011, principal of the Local Bonds is payable quarterly, with an administrative fee of 1%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Government 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.

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

The Local Government may prepay the Local Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and DEP. The Local Government shall request approval from the Authority and DEP in writing of any proposed debt which will be issued by the Local Government on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

Number of New Customers to Be Served: 0  
Location: N/A

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

- (i) \$15,551 City of Williamstown, Sewer Revenue Bond, Series 1987 A;
- (ii) \$169,539 City of Williamstown, Sewer Revenue Bond, Series 1987 B;
- (iii) \$659,637 City of Williamstown, Sewer Revenue Bond, Series 1987 A-1; and
- (iv) \$230,282 City of Williamstown, Sewer Revenue Bond, Series 2005 A.

B. Series B Bonds (ARRA)

Principal Amount of Local Bonds \$660,000

Purchase Price of Local Bonds \$660,000

The Local Bonds shall bear no interest. The Authority at the direction of the DEP shall forgive the principal amount of the Local Bonds. Principal forgiveness shall begin on September 1, 2011, and shall be made quarterly thereafter (March 1, June 1, September 1 and December 1 of each year) as set forth on Schedule Y attached hereto and incorporated herein by reference for a period of ten years.

The Local Bonds are fully registered in the name of the Authority.

The Local Government shall make monthly payments into the Renewal and Replacement Fund as required by Section 4.1 of this Agreement for at least the term of the Local Bonds.

The Local Government shall notify the Authority and the Council of any proposed bond indebtedness secured by the revenues of the System.

**SCHEDULE Y**  
**DEBT SERVICE SCHEDULE**  
**40 Years from Closing Date**  
**1% Interest Rate**

Dated Date 12/9/2009  
 Delivery Date 12/9/2009

<u>Period Ending</u>	<u>Principal</u>	<u>Interest</u>	<u>Debt Service</u>
12/9/2009			
9/1/2011	5,195		5,195
12/1/2011	5,195		5,195
3/1/2012	5,195		5,195
6/1/2012	5,195		5,195
9/1/2012	5,195		5,195
12/1/2012	5,195		5,195
3/1/2013	5,195		5,195
6/1/2013	5,195		5,195
9/1/2013	5,195		5,195
12/1/2013	5,195		5,195
3/1/2014	5,195		5,195
6/1/2014	5,195		5,195
9/1/2014	5,195		5,195
12/1/2014	5,195		5,195
3/1/2015	5,195		5,195
6/1/2015	5,195		5,195
9/1/2015	5,195		5,195
12/1/2015	5,195		5,195
3/1/2016	5,195		5,195
6/1/2016	5,195		5,195
9/1/2016	5,195		5,195
12/1/2016	5,195		5,195
3/1/2017	5,195		5,195
6/1/2017	5,195		5,195
9/1/2017	5,195		5,195
12/1/2017	5,195		5,195
3/1/2018	5,195		5,195
6/1/2018	5,195		5,195
9/1/2018	5,195		5,195
12/1/2018	5,195		5,195
3/1/2019	5,195		5,195
6/1/2019	5,195		5,195
9/1/2019	5,195		5,195
12/1/2019	5,195		5,195
3/1/2020	5,195		5,195
6/1/2020	5,195		5,195
9/1/2020	5,195		5,195
12/1/2020	5,195		5,195
3/1/2021	5,195		5,195
6/1/2021	5,195		5,195

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**BOND DEBT SERVICE**  
City of Williamstown  
40 Years from Closing Date  
1% Interest Rate

<u>Period Ending</u>	<u>Principal</u>	<u>Interest</u>	<u>Debt Service</u>
9/1/2021	5,195		5,195
12/1/2021	5,195		5,195
3/1/2022	5,195		5,195
6/1/2022	5,195		5,195
9/1/2022	5,195		5,195
12/1/2022	5,195		5,195
3/1/2023	5,195		5,195
6/1/2023	5,195		5,195
9/1/2023	5,195		5,195
12/1/2023	5,195		5,195
3/1/2024	5,195		5,195
6/1/2024	5,195		5,195
9/1/2024	5,195		5,195
12/1/2024	5,195		5,195
3/1/2025	5,195		5,195
6/1/2025	5,195		5,195
9/1/2025	5,195		5,195
12/1/2025	5,195		5,195
3/1/2026	5,195		5,195
6/1/2026	5,195		5,195
9/1/2026	5,195		5,195
12/1/2026	5,195		5,195
3/1/2027	5,195		5,195
6/1/2027	5,195		5,195
9/1/2027	5,195		5,195
12/1/2027	5,195		5,195
3/1/2028	5,195		5,195
6/1/2028	5,195		5,195
9/1/2028	5,195		5,195
12/1/2028	5,195		5,195
3/1/2029	5,195		5,195
6/1/2029	5,195		5,195
9/1/2029	5,195		5,195
12/1/2029	5,195		5,195
3/1/2030	5,195		5,195
6/1/2030	5,195		5,195
9/1/2030	5,195		5,195
12/1/2030	5,195		5,195
3/1/2031	5,195		5,195
6/1/2031	5,195		5,195
9/1/2031	5,195		5,195
12/1/2031	5,195		5,195
3/1/2032	5,195		5,195

**BOND DEBT SERVICE**  
City of Williamstown  
40 Years from Closing Date  
1% Interest Rate

Period Ending	Principal	Interest	Debt Service
6/1/2032	5,195		5,195
9/1/2032	5,195		5,195
12/1/2032	5,195		5,195
3/1/2033	5,195		5,195
6/1/2033	5,195		5,195
9/1/2033	5,195		5,195
12/1/2033	5,195		5,195
3/1/2034	5,195		5,195
6/1/2034	5,195		5,195
9/1/2034	5,195		5,195
12/1/2034	5,195		5,195
3/1/2035	5,195		5,195
6/1/2035	5,195		5,195
9/1/2035	5,195		5,195
12/1/2035	5,195		5,195
3/1/2036	5,195		5,195
6/1/2036	5,195		5,195
9/1/2036	5,195		5,195
12/1/2036	5,195		5,195
3/1/2037	5,195		5,195
6/1/2037	5,195		5,195
9/1/2037	5,195		5,195
12/1/2037	5,195		5,195
3/1/2038	5,195		5,195
6/1/2038	5,195		5,195
9/1/2038	5,195		5,195
12/1/2038	5,195		5,195
3/1/2039	5,195		5,195
6/1/2039	5,195		5,195
9/1/2039	5,195		5,195
12/1/2039	5,195		5,195
3/1/2040	5,195		5,195
6/1/2040	5,195		5,195
9/1/2040	5,195		5,195
12/1/2040	5,195		5,195
3/1/2041	5,195		5,195
6/1/2041	5,195		5,195
9/1/2041	5,195		5,195
12/1/2041	5,195		5,195
3/1/2042	5,195		5,195
6/1/2042	5,194		5,194
9/1/2042	5,194		5,194
12/1/2042	5,194		5,194

**BOND DEBT SERVICE**  
City of Williamstown  
40 Years from Closing Date  
1% Interest Rate

Period Ending	Principal	Interest	Debt Service
3/1/2043	5,194		5,194
6/1/2043	5,194		5,194
9/1/2043	5,194		5,194
12/1/2043	5,194		5,194
3/1/2044	5,194		5,194
6/1/2044	5,194		5,194
9/1/2044	5,194		5,194
12/1/2044	5,194		5,194
3/1/2045	5,194		5,194
6/1/2045	5,194		5,194
9/1/2045	5,194		5,194
12/1/2045	5,194		5,194
3/1/2046	5,194		5,194
6/1/2046	5,194		5,194
9/1/2046	5,194		5,194
12/1/2046	5,194		5,194
3/1/2047	5,194		5,194
6/1/2047	5,194		5,194
9/1/2047	5,194		5,194
12/1/2047	5,194		5,194
3/1/2048	5,194		5,194
6/1/2048	5,194		5,194
9/1/2048	5,194		5,194
12/1/2048	5,194		5,194
3/1/2049	5,194		5,194
6/1/2049	5,194		5,194
9/1/2049	5,194		5,194
12/1/2049	5,195		5,195
	<b>800,000</b>	*	<b>800,000</b>

\*Plus a Quarterly administrative fee of \$1,006.47 for a total  
Administrative expense of \$154,996.38

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**BOND DEBT SERVICE**

City of Williamstown

10 Years

Dated Date 12/9/2009

Delivery Date 12/9/2009

Series B

<u>Period Ending</u>	<u>Debt Service</u>	<u>Principal Forgiveness</u>
12/9/2009		
9/1/2011	-16,500	-16,500
12/1/2011	-16,500	-16,500
3/1/2012	-16,500	-16,500
6/1/2012	-16,500	-16,500
9/1/2012	-16,500	-16,500
12/1/2012	-16,500	-16,500
3/1/2013	-16,500	-16,500
6/1/2013	-16,500	-16,500
9/1/2013	-16,500	-16,500
12/1/2013	-16,500	-16,500
3/1/2014	-16,500	-16,500
6/1/2014	-16,500	-16,500
9/1/2014	-16,500	-16,500
12/1/2014	-16,500	-16,500
3/1/2015	-16,500	-16,500
6/1/2015	-16,500	-16,500
9/1/2015	-16,500	-16,500
12/1/2015	-16,500	-16,500
3/1/2016	-16,500	-16,500
6/1/2016	-16,500	-16,500
9/1/2016	-16,500	-16,500
12/1/2016	-16,500	-16,500
3/1/2017	-16,500	-16,500
6/1/2017	-16,500	-16,500
9/1/2017	-16,500	-16,500
12/1/2017	-16,500	-16,500
3/1/2018	-16,500	-16,500
6/1/2018	-16,500	-16,500
9/1/2018	-16,500	-16,500
12/1/2018	-16,500	-16,500
3/1/2019	-16,500	-16,500
6/1/2019	-16,500	-16,500
9/1/2019	-16,500	-16,500
12/1/2019	-16,500	-16,500
3/1/2020	-16,500	-16,500
6/1/2020	-16,500	-16,500
9/1/2020	-16,500	-16,500
12/1/2020	-16,500	-16,500
3/1/2021	-16,500	-16,500
6/1/2021	-16,500	-16,500
	<b>-660,000</b>	<b>-660,000</b>



PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: October 23, 2009

**FINAL**

11/12/2009

CASE NO. 09-1062-S-CN

## CITY OF WILLIAMSTOWN

Application for a certificate of convenience and necessity to construct improvements to the existing treatment works including the replacement/modification of the headworks screening facilities, installation of blowers with an upgraded capacity, replacement of the existing solids dewatering equipment, plant piping, electrical work and necessary appurtenances

RECOMMENDED DECISION

On June 24, 2009, the City of Williamstown (City) filed an application with the Public Service Commission, pursuant to W.Va. Code §24-2-11, for a certificate of convenience and necessity to construct certain additions and improvements to its wastewater treatment system in Wood County. The City estimated that the project would cost approximately \$1,320,000 and would be financed through a West Virginia Clean Water State Revolving Fund Loan in the amount of \$1,320,000. The City also indicated that it required a rate increase to support the project and had proposed a rate increase of approximately 15%. Along with the application, the City filed a public notice of change in rates by municipalities, noting that it had adopted by ordinance on July 7, 2009, a revised tariff containing increased rates, tolls and charges for furnishing sewer service to its 1,362 customers at Williamstown, in Wood County, with said rates anticipated to produce approximately \$64,194 annually in additional revenue, and a Rule 42 Exhibit. The City also filed a copy of its current sewer tariff; a letter dated July 3, 2008, from the West Virginia Department of Environmental Protection (DEP), committing a loan in the amount of \$1,320,000 through the State Revolving Fund Program at an interest rate of 2%, with a 1% annual administrative fee, and a term of 20 years; a letter from the West Virginia Division of Culture and History indicating that there were no architectural or archaeological resources in the area of the project; the information regarding the classification and license number of the treatment plant operator; and a statement that the City anticipated receiving construction bids prior to November 19, 2009. The City also filed a draft Notice of Filing and a design report, drawings and project manual.

By Commission Notice of Filing Order entered on June 26, 2009, the City was directed to give Notice of the Filing of its application by publishing a copy of the Notice of Filing Order one time in a qualified newspaper published and generally circulated in Wood County, making due return to the Commission of a proper certification of publication immediately thereafter. The notice allowed anyone desiring to protest or intervene in the application to do so within thirty (30) days following the date of publication. Finally, the notice stated that, if no substantial protest to the application was filed within the thirty-day period, the Commission could waive formal hearing and grant the application based upon the evidence submitted with the application and the Commission's review thereof.

By Commission Referral Ordered entered on July 8, 2009, this matter was referred to the Division of Administrative Law Judges for a decision to be rendered on or before November 9, 2009, if no substantial protest to the application was received within thirty days following the provision of public notice, or on or before December 8, 2009, if substantial protest was received within the thirty-day period.

On July 30, 2009, Staff Attorney Wendy Braswell filed the Initial Joint Staff Memorandum in this proceeding, attached to which was the Initial Staff Internal Memorandum prepared by Utilities Analyst Karen Buckley of the Water and Wastewater Division and Technical Analyst Associate David W. Holley of the Engineering Division. Technical Staff noted that, while the City stated in its application that an ordinance had been adopted to increase rates to support the project, Staff had been unable to find where the City had submitted its ordinance for review with the Commission's Legal Division. Commission Staff requested six specific additional pieces of information which it required in order to make its final recommendation.

On August 3, 2009, Staff Attorney Braswell filed Staff's first request for information upon the City, requesting the information specified in the Initial Joint Staff Memorandum.

On August 10, 2009, the City filed its response to Commission Staff's data request, including a DEP letter dated July 29, 2009, approving the plans and specifications for the proposed project; the City's NPDES Permit and modifications thereto; a cash flow analysis for the fiscal year ended June 30, 2009, indicating that, upon project completion, the City anticipated a cash flow surplus of \$21,274 and debt service coverage of 127.22%; and a statement indicating that, although it was anticipating funding in the amount of \$1,320,000 through the Clean Water State Revolving Funds of economic stimulus funds provided by The American Recovery and Reinvestment Act of 2009 (ARRA), the City had received no funding commitment documentation from DEP in regard to ARRA funds and had not been able to ascertain from DEP representatives what events would allow the commitment to be forthcoming.

On August 11, 2009, the City filed an affidavit of public notice by First Class Mail. The affidavit was dated August 10, 2009, however, the notary public information indicated that the affidavit was taken, subscribed and sworn before the notary in Wood County on July 10, 2009. The text of the affidavit indicated that the Notice of Filing was mailed

separately to each of the City's utility customers within the thirty-day time period beginning June 26, 2009. The City did not file an affidavit of publication.

By Procedural Order issued on September 4, 2009, the undersigned noted that the affidavit filed by the City on August 11, 2009, did not constitute adequate proof of notice to its customers and pointed out that the City was ordered by the Commission to publish the Notice of Filing one time in a qualified newspaper, published and generally circulated in Wood County. The thirty-day protest period would commence from the date of that publication. The Order also noted that West Virginia Code §24-2-11 requires that notice be given by publication. Accordingly, the City was directed to comply with the Notice of Filing Order previously issued by the Commission on June 26, 2009, and publish that notice one time in a newspaper, qualified pursuant to West Virginia Code §59-3-1, et seq, published and generally circulated in Wood County, making due return to the Commission of proper certification of that publication immediately thereafter, and no later than September 25, 2009.

On September 17, 2009, the City filed an affidavit of publication verifying that the Notice of Filing was published in the Parkersburg News and Sentinel, a qualified newspaper published in Wood County, on September 12, 2009. The thirty-day protest period expired on October 13, 2009, due to the Columbus Day Holiday, with no protests having been filed with the Commission either by that date or the date of this Order.

Also September 17, 2009, the City filed a letter from the DEP, indicating that the City appeared to be eligible to be considered for a \$1,320,000 loan, using funds provided by The American Recovery and Reinvestment Act of 2009 (ARRA), with a negative 3% interest rate for a term of 38 years, with approximately 50% debt forgiveness, and an annual administrative fee of 1% for the amount of the loan to be repaid.

On September 25, 2009, Staff Attorney Wendy Braswell filed the Final Joint Staff Memorandum herein, attached to which was the Utilities Division Final Internal Memorandum prepared by Mr. Holley and Ms. Buckley. The City's application requests approval for the construction of improvements to the existing wastewater treatment plant, including the replacement/modification of the headworks screening facilities; the installation of blowers with an upgraded capacity; replacement of the existing solids dewatering equipment; plant piping; electrical work; and necessary appurtenances, at an estimated cost of \$1,320,000. The project was approved by the West Virginia Infrastructure and Jobs Development Council (IJDC) as Project No. 2007S-992. The City currently operates a 0.4 MGD sewage treatment and collection system. The treatment plant consists of a 450,000-gallon oxidation ditch, 261,000-gallon clarifiers, a 49,500-gallon aerobic sludge digester, an ultra-violet (UV) disinfection unit, two vacuum drying beds and all necessary appurtenances. The collection system consists of approximately 15 miles of gravity sewer main, 336 manholes, 3 sewage lift stations, approximately 0.42 miles of sewage force main and all necessary appurtenances.

As noted in the engineering review, the project will be constructed under one contract and will include the components specified above.

According to Technical Staff, the project is needed to maximize efficiencies in the operation and maintenance of the existing wastewater treatment plant. The City has estimated that operation and maintenance expenses will increase annually by approximately \$23,926 due to the project. Technical Staff had reviewed the additional operation and maintenance costs and found them to be reasonable. Technical Staff noted that the City had received the DEP letter approving the plans and specifications for the project and the WV NPDES permit modification. The City currently employs one certified sewer operator.

According to Technical Staff, the project was designed to replace or modify existing equipment at the City's treatment plant, due to age, lack of performance or obsolescence of existing components. The existing influent arc screen, which is part of the headworks, is often not serviceable due to clogging, freezing temperatures and equipment malfunctions. The current aeration equipment serving the solids holding tank serves only to avoid septic conditions and does not provide for suitable digestion of the volatile solids. The vacuum sludge drying bed media plates are considered by their manufacturer to have exceeded their useful life, which is further evidenced by their current performance. The City determined that it was necessary to upgrade the existing facility by replacing the specified equipment in order to provide for proper operation and performance of the treatment facilities.

The City's 2008 Annual Report indicates that it serves approximately 1,451 residential, commercial, industrial, public authority and resale customers. Using the 195,965,000 gallons of water used for billing purposes for 2008, with 4,500 gallons as the average monthly usage per customer, the City serves approximately 3,629 equivalent dwelling units (EDUs). At a total project cost of \$1,220,000, the cost per EDU is approximately \$364.00, which Technical Staff considers to be very reasonable for a sewer project. The percentage of engineering fees to construction and project costs is approximately 16.45% and 13.09% respectively, which Commission Staff believes is high when compared to other engineering agreements and certificate filings reviewed by Staff. Technical Staff stated that its review of the plans and specifications of the proposed project indicated that they are in general conformance with the Commission's rules and regulations. Technical Staff recommended that the certificate application be granted.

In the financial review, Commission Staff noted the stimulus funding letter received on September 17, 2009. The annual payments on that loan will be \$18,216, with an annual administrative fee of \$2,746.00. The loan requires a depreciation/renewal and replacement reserve equal to 2.5% of operating revenues. The City adopted a rate ordinance on July 7, 2009, to increase rates 15% to cover the proposed debt service, debt reserve and project-related operating expenses. The rates and charges became effective August 21, 2009. With those increased rates and charges, at project completion, the City should experience a cash surplus of \$4,464 and debt service coverage of 137.83%.

In summary, Commission Staff recommended that the certificate application be granted; that the proposed ARRA financing be approved; and that several other conditions regarding the project be adopted.

On September 28, 2009, the City filed a motion to toll the certificate case, noting that it did not publish the Notice of Filing until September 12, 2009. The City requested a tolling of the statutory deadline for 60 days to allow sufficient time for the expiration of the protest period and for the Commission's Division of Administrative Law Judges to adjudicate the City's application for a certificate.

By Commission Order entered on October 7, 2009, the City's motion was granted. The statutory deadline was tolled for 60 days until February 21, 2010, and the Administrative Law Judge's decision due dates were extended to January 8, 2010, in the event of no protest, and February 8, 2010, if substantial protest was received.

#### DISCUSSION

The Project at issue herein, in and of itself, is not remarkable and appears to be well-justified. There is more than ample proof of need to support the conclusion that the public convenience and necessity require the Project and that the Project appears to be economically and financially viable, based upon the proposed ARRA funding and the City's current sewer rates and charges. This Project is remarkable because it is one of the SCN applications created by the Public Service Commission in General Order No. 182.09, issued on April 16, 2009. In that General Order, the Commission discussed the process to be followed for water and sewer certificate projects that are to be funded with stimulus funds under the ARRA.<sup>1</sup> The Commission noted that the State Bureau for Public Health will have approximately 19.5 million dollars in federal stimulus funds for water projects, while the DEP will have approximately 61 million dollars for sewer projects. Originally, those projects had to be bid by August 2009 and the contracts awarded by October 2009, although it now appears that the projects must be bid by October 2009. The economic stimulus projects are made more complicated by the fact that the funding agencies overseeing the distribution of economic stimulus funds will not be finally awarding those funds through a traditional commitment letter until approximately August or September of 2009. Economic stimulus money is awarded on a "first come, first served" basis and there is no guarantee that any project which received a letter from either DEP or the Bureau for Public Health, indicating that a project was eligible for certain level of ARRA funding, will actually receive the originally specified level of ARRA funding, or any ARRA funding at all.

In General Order No. 182.09, the Commission determined that, for already certificated municipal water or sewer projects whose funding packages will change due to the award of ARRA funds, a municipality need not petition the Commission to reopen the certificate proceeding for approval of that revised financing, but, instead, can simply file a letter with the Commission, as a closed entry, detailing the new financing package, with no further Commission action.

---

<sup>1</sup>While the availability of ARRA funding has generated a flurry of SCN certificate filings with accelerated timelines, there has been no statutory change in the West Virginia Code to accommodate the ARRA funding. For the purposes of W. Va. Code § 24-2-11, ARRA funding is no different from any other funding.

Traditionally, orders granting certificates of convenience and necessity to municipally-operated public utilities have specifically approved the funding package proposed for the municipal water or sewer project and have required that the municipally-operated public utility file a petition to reopen the proceeding to obtain Commission approval of any changes to project financing only in the event that project costs change and rates are affected, either requiring increases or decreases. That process is being retained in large part for municipal projects using ARRA funds, since that process provides a reasonable, and streamlined, means of addressing the timing problems associated with ARRA projects, i.e., the financing would not be finally committed until sometime in August or September of 2009 and contracts must be awarded soon after. The biggest difference is the approval of project financing that has not been committed. To further accommodate the timing constraints of ARRA, essentially, the determination is being made in advance that any funding package that includes ARRA funds is reasonable, so that changes to an ARRA funding package do not require additional review, unless rates have to be increased.

Despite the ARRA constraints, the Public Service Commission has an obligation with regard to any certificate application, whether it is filed by a private utility, a public service district or a municipality, to insure that the project is economically feasible and financially viable, which includes guaranteeing that there is adequate financing to fund the proposed project. See, Town of Man and Man Water Works, Inc., Case No. 81-433-W-PC, Order Affirming Hearing Examiner's Decision, April 16, 1982, 69 ARPSCWV 1893; Ohio County Public Service District, Case No. 82-482-S-CN, Order Affirming Hearing Examiner's Decision Without Prejudice, April 8, 1983, 70 ARPSCWV 2049. See also, Sexton v. Public Service Commission, 188 W. Va. 305, 423 S.E.2d 914, (1992). Accordingly, the City must reopen this proceeding for Commission review and approval of project changes which generate rate changes, with the clarification that this requirement will apply only to rate increases. Further, it is reasonable to include an ordering paragraph prohibiting the municipally-operated public utility from commencing construction, unless it has secured adequate funding to cover all project costs, as those costs have been determined upon the conclusion of the bidding process and after bids have been awarded for all of the construction contracts associated with the project, and to file that information with the Commission. The City will be required to file with the Commission a letter detailing the final funding package for this project upon that information being known, along with the bid tabulations for each construction contract to be awarded for the project. Those filings should be made as closed entries and should not be treated as petitions to reopen.

In the event that, after the filing of the letter by the municipally-operated public utility providing the details of the finalized funding package for the certificated project, Commission Staff concludes, based upon its own independent analysis, that either the specified funding package or the municipal rates are insufficient to cover all project costs, it will be the obligation of Commission Staff to petition the Public Service Commission to reopen the municipal certificate proceeding for the purpose of reviewing the financial viability of the certificated project.

As with all certificate applications filed with the Commission, in the event that the project scope changes, or changes in project cost and/or financing require a further rate increase, or if the City ultimately receives no ARRA funding, the City will be required to file a petition to reopen this matter, to allow the Commission to assess the nature of the project changes, both to determine if they are adequately funded and to determine if those changes are appropriate and not in conflict with any state laws or Commission rules, and to insure that funding package and associated rates support the economic feasibility and financial viability of the project.

#### FINDINGS OF FACT

1. On June 24, 2009, the City of Williamstown filed an application with the Public Service Commission for a certificate of public convenience and necessity for a project to construct improvements to its wastewater treatment facility. The Project has been approved by the IJDC. (See, application filed June 24, 2009; Final Joint Staff Memorandum and attachment filed September 25, 2009).

2. By Notice of Filing Order entered on June 26, 2009, the City of Williamstown was required to publish a Notice of Filing one time in a newspaper, published and generally circulated in Wood County, providing anyone affected by the application thirty (30) days in which to file written protests with the Public Service Commission. No protests were filed within the thirty-day protest period or as of the date of this Order. (See, Notice of Filing Order entered June 26, 2009; affidavit of publication filed September 17, 2009; case file generally).

3. The City has received a letter from the West Virginia Department of Environmental Protection, informing it that the Project is eligible to be considered for an award of economic stimulus funds, under The American Recovery and Reinvestment Act of 2009, with said funding to be in the form of a \$1,320,000 loan, with a negative 3% interest rate, for a term of 38 years with 50% debt forgiveness and an annual administrative fee of 1%. (See, DEP letter dated 2009, filed September 17, 2009).

4. The City enacted a rate increase which became effective on August 21, 2009. Based upon those rates, and with adjustment by Commission Staff for different expenses, at project completion, the City should experience a cash flow surplus of \$4,464, with debt service coverage of 137.83%. (See, Final Joint Staff Memorandum and attachment filed September 25, 2009).

5. Commission Technical Staff has reviewed the original plans and specifications for the Project and has concluded that there are no conflicts with the Commission's Sewer Rules concerning engineering requirements. (See, Final Joint Staff Memorandum and attachment filed September 25, 2009).

6. Several elements of the City's treatment either aren't working at all, are only partially working, require excessive maintenance or have far-exceeded their useful lives. The project should eliminate these problems and maximize the efficiencies in the operation and maintenance

of the plant. (See, Final Joint Staff Memorandum and attachment filed September 25, 2009).

7. After concluding its review, Commission Staff recommended that a certificate of convenience and necessity be granted to the City of Williamstown, that the proposed ARRA financing be approved and that various other conditions with regard to certification of the project be adopted. (See, Final Joint Staff Memorandum and attachment filed September 25, 2009).

#### CONCLUSIONS OF LAW

1. The Public Service Commission is empowered to require all public utilities, including municipally-operated public utilities, to demonstrate that a proposed water or sewer project is economically feasible and financially viable by demonstrating that they have secured adequate funding to cover all project costs, as those project costs are determined to be at the conclusion of the bidding process, and that the resulting rates are just, reasonable, applied without unjust discrimination or preference and based primarily on the cost of providing service. See, W. Va. Code §24-2-4b; State ex. rel. Public Service Commission v. Town of Fayetteville, 212 W. Va. 427, 573 S.E.2d 338 (2002); Town of Man and Man Water Works, Inc., Case No. 81-433-W-PC, Order Affirming Hearing Examiner's Decision, April 16, 1982, 69 ARPSCWV 1893; Ohio County Public Service Commission, Case No. 82-482-S-CN, Order Affirming Hearing Examiner's Decision Without Prejudice, April 8, 1983, 70 ARPSCWV 2049. See also, Sexton v. Public Service Commission, 188 W. Va. 305, 423 S.E.2d 914, (1992).

2. In order to accommodate the unique timing issues involving the economic stimulus funds provided under The American Recovery and Reinvestment Act of 2009, and recognizing that these funds are available for a short period on a one-time only basis, it is reasonable to modify some of the Commission's traditional requirements regarding certificate applications, as set forth in the ordering paragraphs of this decision.

3. The public convenience and necessity require the proposed project.

4. The current rates and charges of the City of Williamstown appear to be sufficient to cover all project-related costs, as well as the City's going-level operation and maintenance expenses.

5. The proposed funding package for the project, consisting of the DEP loan of ARRA funds in the amount of \$1,320,000, with 50% debt forgiveness and a 1% annual administrative fee, is reasonable and is sufficient to cover the cost of the project, at its current cost estimates.

6. Because ARRA funds represent an additional one-time infusion of capital for West Virginia water and sewer projects, with extremely favorable terms, it is reasonable to conclude that any funding package which includes ARRA funds is convenient to the public, without further

review, as long as rates do not have to be increased to support funding revisions made after a certificate is granted.

7. A certificate of convenience and necessity should be granted to the City of Williamstown for the project specified herein, without specifically approving the project's plans and specifications.

ORDER

IT IS, THEREFORE, ORDERED that the application filed by the City of Williamstown on June 24, 2009, for a certificate of convenience and necessity to construct improvements at its wastewater treatment facility, all as more particularly described in the plans and specifications filed with the application, at a total cost of approximately \$1,320,000, be, and it hereby is, granted, without specifically approving the plans and specifications filed herein.

IT IS FURTHER ORDERED that the proposed project financing package, consisting of a loan in the amount of \$1,320,000 at a -3% interest rate for a term of 38 years from the Department of Environmental Protection, with 50% debt forgiveness, and a 1% annual administrative fee, using funds provided by The American Recovery and Reinvestment Act of 2009, be, and it hereby is, approved. Upon finalization of the funding package, the City of Williamstown shall file a letter with the Commission detailing the specifics of that funding package, including the terms and conditions of any loans awarded. If the funding package is revised, but still includes ARRA funds, the City is not required to petition the Commission for approval of that revised project financing, as long as the revised ARRA funding package does not require an additional rate increase. It will be sufficient for the City to file the revised funding commitment documentation, along with a certification from its certified public accountant or bond counsel that the revised funding package is adequate to cover all project costs and will not require any additional rate increase.

IT IS FURTHER ORDERED that, if the project scope changes, if project costs or financing require a rate increase, or if, ultimately, the City of Williamstown does not receive any ARRA funding, the City of Williamstown petition the Commission for approval of such change(s) prior to commencing construction.

IT IS FURTHER ORDERED that the City of Williamstown cannot proceed to construction unless and until it has received all required federal, state and local permits, and unless the finally-awarded ARRA funding package is adequate to cover all project costs, as determined at the conclusion of the bidding process with a bid awarded for each construction contract or vendor contract for the project.

IT IS FURTHER ORDERED that the City of Williamstown provide a copy of the engineer's certified tabulation of bids, within ten (10) days of the bid opening date, for each construction contract or vendor contract to be awarded for this project.

IT IS FURTHER ORDERED that the City of Williamstown provide a copy of the certification of substantial completion for each contract associated with this project, within ten (10) days of issuance.

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

IT IS FURTHER ORDERED that this matter be 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.



Melissa K. Marland  
Chief Administrative Law Judge

MKM:ksf  
091062aa.wpd

**LISA K. THORNBURG, CPA**

2514 BEDFORD CHAPEL ROAD

MILTON, WV 25541

(304) 743-8192

ThornburgCPA@aol.com

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December 7, 2009

Ms. Sandra Squire, Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks Street  
P O Box 812  
Charleston, WV 25323

RECEIVED  
09 DEC - 7 PM 3:50  
W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

Re: Case No. 09-1062-S-CN  
Wastewater Treatment Plant Improvements Project  
City of Williamstown

Dear Ms. Squire:

In accordance with the Staff's request contained in the recommended decision issued October 23, 2009, enclosed is a CPA Verification relating to the sufficiency of revenues of the system in relation to the final funding package for this project consisting of a \$660,000 ARRA forgiven loan and an \$800,000 SRF loan at 0% for a term of 38 years. I have also enclosed a revised Schedule H for the previously filed Rule 42 based on this new funding package.

If you need any further information, please let me know.

Sincerely,



Lisa K. Thornburg, CPA

cc: Wendy Braswell, Esq.  
Staff Attorney

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Case No.: 09-1062-S-CN

CITY OF WILLIAMSTOWN,  
a municipal utility,  
Williamstown, Wood County, West Virginia

Application for a certificate of convenience and necessity to construct  
improvements to the existing treatment works including the  
replacement/modification of the headworks screening facilities, installation of  
blowers with an upgraded capacity, replacement of the existing solids  
dewatering equipment, plant piping, electrical work and necessary  
appurtenances

STATE OF WEST VIRGINIA,

COUNTY OF CABELL, to-wit:

AFFIDAVIT

I, Lisa K. Thornburg, CPA, on behalf of the City of Williamstown (the "City"), after making an oath of affirmation to tell the truth, say that, I have reviewed the Recommended Decision of the Public Service Commission of West Virginia in Case No. 09-1062-S-CN, which became final on November 12, 2009, approving a \$1,320,000 Department of Environmental Protection loan at a -3% interest rate for a term of 38 years, with 50% debt forgiveness, and a 1% annual administrative fee, using funds provided by The American Recovery and Reinvestment Act of 2009. Based upon all the information that has been provided to me, I am of the opinion that (i) the rates and charges for the City are not affected by the revised funding consisting of (a) an \$800,000 Department of Environmental Protection loan at a 0% interest rate for a term of 38 years, and a 1% annual administrative fee, and (b) a \$660,000 Department of Environmental Protection loan at a -3% interest rate for a term of 11.5 years, with 100% debt forgiveness, using funds provided by The American Recovery and Reinvestment Act of 2009; (ii) the rates and charges for the City will be sufficient to provide revenues which, together with other revenues of the System, will allow me to provide the CPA Certificate required for the issuance of the Series 2009 Bonds; (iii) the revised funding package is adequate to cover all project costs; and (iv) no rate increase is necessary for the City to fulfill its obligations with respect to payments owed under the terms of the Series 2009 Bonds.

W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

09 DEC - 7 PM 3: 50

RECEIVED

This Affidavit is executed on the 7<sup>th</sup> day of December, 2009.

*Lisa K. Thornburg*

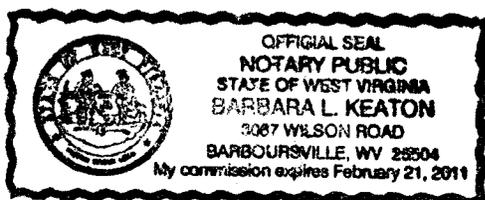
Lisa K. Thornburg, CPA  
License No. 1420  
2514 Bedford Chapel Road  
Milton, WV 25541

Taken, subscribed and sworn to before me this 7<sup>th</sup> day of December, 2009.

My commission expires 2-21-11.

*Barbara L. Keaton*

Notary Public



CITY OF WILLIAMSTOWN - SEWER BOARD  
 CASH FLOW ANALYSIS REVISED 12/07/09  
 FOR THE FISCAL YEAR ENDED JUNE 30, 2008

Statement H

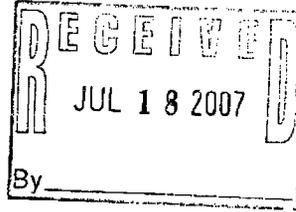
Description:	<u>Per</u> <u>Books</u>	<u>Adjustments</u>	<u>Going</u> <u>Level</u>	<u>Adjustments</u>	<u>Proforma</u>
<b>Available Cash:</b>					
Operating Income	\$ 438,245	\$ 12,839	\$ 451,084	\$ 67,663	\$ 518,747
Other Income	5,202	--	5,202	--	5,202
<b>Total Cash Available</b>	<u>443,447</u>	<u>12,839</u>	<u>456,286</u>	<u>67,663</u>	<u>523,949</u>
<b>Cash Requirements:</b>					
Operating Expenses	335,148	--	335,148	19,000	359,074
Payroll Taxes	12,105	--	12,105	--	12,105
<b>Total Cash Requirements Before Debt Service</b>	<u>347,253</u>	<u>--</u>	<u>347,253</u>	<u>19,000</u>	<u>371,179</u>
<b>Cash Available for Debt Service</b>	96,194	12,839	109,033	48,663	152,770
<b>Debt Service Requirements:</b>					
Debt Service (Existing)	85,174	--	85,174	--	85,174
Debt Service (Existing Truck)	--	3,624	3,624	--	3,624
Debt Service (Existing Line Extension)	--	8,001	8,001	--	8,001
Debt Service (Proposed)	--	--	--	17,368	17,368
<b>Total Debt Service Requirements</b>	<u>85,174</u>	<u>11,625</u>	<u>96,799</u>	<u>17,368</u>	<u>114,167</u>
<b>Debt Coverage Requirements:</b>					
Debt reserve (Existing)	--	8,070	8,070	--	8,070
Debt reserve (Proposed)	--	--	--	1,737	1,737
<b>Total Debt Coverage Requirements</b>	<u>--</u>	<u>8,070</u>	<u>8,070</u>	<u>1,737</u>	<u>9,807</u>
<b>Surplus (Deficit)</b>	<u>\$ 11,020</u>	<u>\$ ( 6,856)</u>	<u>\$ 4,164</u>	<u>\$ 29,558</u>	<u>\$ 28,796</u>
<b>Coverage</b>	112.94%		112.64%		133.81%



# West Virginia Infrastructure & Jobs Development Council

**Public Members:**

Kenneth Lowe, Jr.  
Shepherdstown  
Dwight Calhoun  
Petersburg  
Dave McComas  
Prichard  
Ron Justice  
Morgantown



7-208  
300 Summers Street, Suite 980  
Charleston, West Virginia 25301  
Telephone: (304) 558-4607  
Facsimile: (304) 558-4609

Jefferson E. Brady, PE  
Executive Director

Jefferson.Brady@verizon.net

July 16, 2007

The Honorable Jean Ford  
Mayor, City of Williamstown  
100 West Fifth Street  
Williamstown, West Virginia

Re: City of Williamstown  
Sewer Project 2007S-992

Dear Mayor Ford:

The West Virginia Infrastructure and Jobs Development Council (the "Council") has reviewed the City of Williamstown's (the "City") preliminary application regarding its proposed project to construct improvements to the existing treatment works including replacement of the headworks screening facilities, install aeration equipment for sludge holding tank, and replace solids dewatering equipment (the "Project").

Based on the findings of the Sewer Technical Review Committee, the Council has determined that the Project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The City should carefully review the enclosed comments of the Sewer Technical Review Committee as the City may need to address certain issues raised in said comments as it proceeds with the Project.

Upon consideration of the preliminary application, the Infrastructure Council recommends that the City pursue a \$1,320,000 Clean Water State Revolving Fund loan to fund this project. Please contact the WV Department of Environmental Protection office at 926-0495 for specific information on the steps the City needs to follow to apply for these funds. **Please note that this letter does not constitute funding approval from this agency.**

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

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth Lowe, Jr." with a stylized flourish at the end.

Kenneth Lowe, Jr.

**Enclosure**

cc: Mike Johnson, P.E., DEP (w/o enclosure)  
Region V Planning & Development Council  
J.B. Hildreth, Boyles and Hildreth, Consulting Engineers



CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS  
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM)  
AND  
SERIES 2009 B (ARRA PROGRAM)

CROSS-RECEIPT FOR BOND AND BOND PROCEEDS

The undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of itself and the West Virginia Department of Environmental Protection (the "DEP"), and the undersigned Mayor of the City of Williamstown (the "City"), for and on behalf of the City, hereby certify as follows:

1. On the 9<sup>th</sup> day of December, 2009, at Charleston, West Virginia, the Authority received the City of Williamstown, Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Series 2009 B (ARRA Program) (collectively, the "Series 2009 Bonds"), numbered AR-1, in the principal amount of \$800,000, and BR-1, in the principal amount of \$660,000, dated as of the date hereof. The Series 2009 Bonds represent the entire above-captioned bond issue.

2. At the time of such receipt, the Series 2009 Bonds had been executed and sealed by the designated officials of the City.

3. The City has received and hereby acknowledges receipt from the Authority of the sums of \$102,823.00, being a portion of the principal amount of the Series 2009 A Bond, and \$20,000.00, being a portion of the principal amount of the Series 2009 B Bond. The balance of the principal amount of the Series 2009 Bonds will be advanced to the City by the Authority and the DEP as the construction of the Project progresses.

WITNESS my signature on this 9<sup>th</sup> day of December, 2009.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By: Carol A. Cummings  
Authorized Representative

CITY OF WILLIAMSTOWN

By: [Signature]  
Mayor



CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS  
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM)  
AND  
SERIES 2009 B (ARRA PROGRAM)

REQUEST AND AUTHORIZATION TO  
AUTHENTICATE AND DELIVER BONDS

December 9, 2009

United Bank, Inc.  
500 Virginia Street, East  
Charleston, WV 25301  
Attention: Trust Department

Ladies and Gentlemen:

We herewith hand to you, duly executed, the \$800,000 City of Williamstown, Sewer Revenue Bond, Series 2009 A (West Virginia SRF Program) and \$660,000 City of Williamstown, Sewer Revenue Bond, Series 2009 B (ARRA Program), in the form of two bonds, numbered AR-1 and BR-1, dated the date hereof (collectively, the "Bonds"), issued by the City of Williamstown (the "Issuer"), authorized to be issued under and pursuant to the Bond Ordinance enacted on November 3, 2009, as amended by a Supplemental Resolution adopted by the Issuer on December 1, 2009 (collectively, the "Ordinance"). Other defined terms herein shall have the meanings respectively given such terms in the Ordinance.

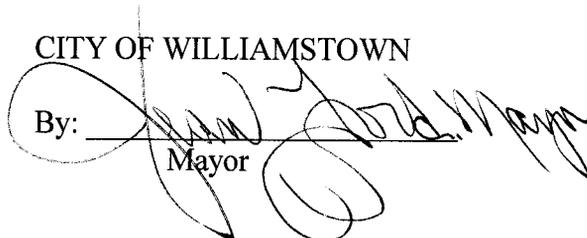
You have received all the documents required to be filed with you pursuant to the Ordinance.

You are hereby requested and authorized to authenticate, register and deliver the Bonds on behalf of the Issuer to the West Virginia Water Development Authority, acting on behalf of the West Virginia Department of Environmental Protection, as the Purchaser of the Bonds, upon payments to the Issuer of \$102,823.00 and \$20,000.00, being the first advances of the principal of the Bonds.

CITY OF WILLIAMSTOWN

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

Mayor

A handwritten signature in black ink, appearing to read "John W. Payne", is written over a horizontal line. The signature is cursive and extends to the right of the line.



UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF WILLIAMSTOWN  
SEWER REVENUE BOND, SERIES 2009 A  
(WEST VIRGINIA SRF PROGRAM)

No. AR-1

\$800,000

KNOW ALL MEN BY THESE PRESENTS: That CITY OF WILLIAMSTOWN, a municipal corporation, public corporation and political subdivision of the State of West Virginia in Wood County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2011, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative Fee (as defined in the hereinafter described Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2011, as set forth on EXHIBIT B attached hereto.

This Bond shall bear interest at the rate of zero percent (0%) per annum. Principal and interest 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").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and among the Issuer, the Authority and the DEP, dated December 9, 2009.

This Bond is issued (i) to pay a portion of the costs of acquiring, constructing and equipping certain improvements and extensions to the existing public sewerage facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing public sewerage facilities of the Issuer, the improvements and extensions constructed by the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 16 and Chapter 22C, Article 2 of the West Virginia Code

of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on November 3, 2009, and a Supplemental Resolution duly adopted by the Issuer on December 1, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON PARITY AS TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT WITH THE ISSUER'S (1) \$15,551 SEWER REVENUE BOND, SERIES 1987A, (2), \$659,637 SEWER REVENUE BOND, SERIES 1987A1, (3) \$230,282 SEWER REVENUE BOND, SERIES 2005A, AND (4) \$660,000 SEWER REVENUE BOND, SERIES 2009 B (ARRA PROGRAM) (COLLECTIVELY, THE "PARITY BONDS"), AND SENIOR AND PRIOR TO THE ISSUER'S \$169,539 SEWER REVENUE BOND, SERIES 1987B (THE "SUBORDINATE PRIOR BOND").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holder of the Parity Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2009 Bond Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds that may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2009 Bond Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Parity Bonds; provided however, that so long as there exists in the Series 2009 Bond Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Parity Bonds, an amount at least equal to the requirement therefore, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owner of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owner of this Bond are

exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

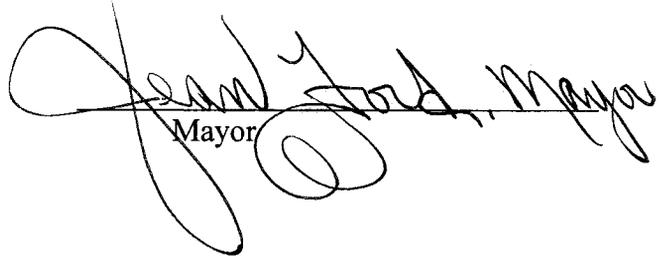
All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of constructing the Project and costs of issuance hereof described in the Bond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

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

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

IN WITNESS WHEREOF, CITY OF WILLIAMSTOWN has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated December 9, 2009.

[SEAL]

  
Mayor

ATTEST:

  
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Series 2009 A Bond described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: December 9, 2009.

UNITED BANK, INC., as Registrar

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

*[Handwritten Signature]*  
Vice President

(Form of)

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$102,823.00	12/9/09	(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	

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

EXHIBIT B

DEBT SERVICE SCHEDULE

**SCHEDULE Y**  
**DEBT SERVICE SCHEDULE**  
40 Years from Closing Date  
1% Administrative Fee

Dated Date 12/09/09  
Delivery Date 12/09/09

<u>Period Ending</u>	<u>Principal</u>	<u>Interest</u>	<u>Debt Service</u>
12/09/09			
09/01/11	5,195		5,195
12/01/11	5,195		5,195
03/01/12	5,195		5,195
06/01/12	5,195		5,195
09/01/12	5,195		5,195
12/01/12	5,195		5,195
03/01/13	5,195		5,195
06/01/13	5,195		5,195
09/01/13	5,195		5,195
12/01/13	5,195		5,195
03/01/14	5,195		5,195
06/01/14	5,195		5,195
09/01/14	5,195		5,195
12/01/14	5,195		5,195
03/01/15	5,195		5,195
06/01/15	5,195		5,195
09/01/15	5,195		5,195
12/01/15	5,195		5,195
03/01/16	5,195		5,195
06/01/16	5,195		5,195
09/01/16	5,195		5,195
12/01/16	5,195		5,195
03/01/17	5,195		5,195
06/01/17	5,195		5,195
09/01/17	5,195		5,195
12/01/17	5,195		5,195
03/01/18	5,195		5,195
06/01/18	5,195		5,195
09/01/18	5,195		5,195
12/01/18	5,195		5,195
03/01/19	5,195		5,195
06/01/19	5,195		5,195
09/01/19	5,195		5,195
12/01/19	5,195		5,195
03/01/20	5,195		5,195
06/01/20	5,195		5,195
09/01/20	5,195		5,195
12/01/20	5,195		5,195
03/01/21	5,195		5,195
06/01/21	5,195		5,195

**BOND DEBT SERVICE**  
City of Williamstown  
40 Years from Closing Date  
1% Administrative Fee

Period Ending	Principal	Interest	Debt Service
09/01/21	5,195		5,195
12/01/21	5,195		5,195
03/01/22	5,195		5,195
06/01/22	5,195		5,195
09/01/22	5,195		5,195
12/01/22	5,195		5,195
03/01/23	5,195		5,195
06/01/23	5,195		5,195
09/01/23	5,195		5,195
12/01/23	5,195		5,195
03/01/24	5,195		5,195
06/01/24	5,195		5,195
09/01/24	5,195		5,195
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03/01/25	5,195		5,195
06/01/25	5,195		5,195
09/01/25	5,195		5,195
12/01/25	5,195		5,195
03/01/26	5,195		5,195
06/01/26	5,195		5,195
09/01/26	5,195		5,195
12/01/26	5,195		5,195
03/01/27	5,195		5,195
06/01/27	5,195		5,195
09/01/27	5,195		5,195
12/01/27	5,195		5,195
03/01/28	5,195		5,195
06/01/28	5,195		5,195
09/01/28	5,195		5,195
12/01/28	5,195		5,195
03/01/29	5,195		5,195
06/01/29	5,195		5,195
09/01/29	5,195		5,195
12/01/29	5,195		5,195
03/01/30	5,195		5,195
06/01/30	5,195		5,195
09/01/30	5,195		5,195
12/01/30	5,195		5,195
03/01/31	5,195		5,195
06/01/31	5,195		5,195
09/01/31	5,195		5,195
12/01/31	5,195		5,195
03/01/32	5,195		5,195

**BOND DEBT SERVICE**  
City of Williamstown  
40 Years from Closing Date  
1% Administrative Fee

Period Ending	Principal	Interest	Debt Service
06/01/32	5,195		5,195
09/01/32	5,195		5,195
12/01/32	5,195		5,195
03/01/33	5,195		5,195
06/01/33	5,195		5,195
09/01/33	5,195		5,195
12/01/33	5,195		5,195
03/01/34	5,195		5,195
06/01/34	5,195		5,195
09/01/34	5,195		5,195
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06/01/35	5,195		5,195
09/01/35	5,195		5,195
12/01/35	5,195		5,195
03/01/36	5,195		5,195
06/01/36	5,195		5,195
09/01/36	5,195		5,195
12/01/36	5,195		5,195
03/01/37	5,195		5,195
06/01/37	5,195		5,195
09/01/37	5,195		5,195
12/01/37	5,195		5,195
03/01/38	5,195		5,195
06/01/38	5,195		5,195
09/01/38	5,195		5,195
12/01/38	5,195		5,195
03/01/39	5,195		5,195
06/01/39	5,195		5,195
09/01/39	5,195		5,195
12/01/39	5,195		5,195
03/01/40	5,195		5,195
06/01/40	5,195		5,195
09/01/40	5,195		5,195
12/01/40	5,195		5,195
03/01/41	5,195		5,195
06/01/41	5,195		5,195
09/01/41	5,195		5,195
12/01/41	5,195		5,195
03/01/42	5,195		5,195
06/01/42	5,194		5,194
09/01/42	5,194		5,194
12/01/42	5,194		5,194

**BOND DEBT SERVICE**  
City of Williamstown  
40 Years from Closing Date  
1% Administrative Fee

Period Ending	Principal	Interest	Debt Service
03/01/43	5,194		5,194
06/01/43	5,194		5,194
09/01/43	5,194		5,194
12/01/43	5,194		5,194
03/01/44	5,194		5,194
06/01/44	5,194		5,194
09/01/44	5,194		5,194
12/01/44	5,194		5,194
03/01/45	5,194		5,194
06/01/45	5,194		5,194
09/01/45	5,194		5,194
12/01/45	5,194		5,194
03/01/46	5,194		5,194
06/01/46	5,194		5,194
09/01/46	5,194		5,194
12/01/46	5,194		5,194
03/01/47	5,194		5,194
06/01/47	5,194		5,194
09/01/47	5,194		5,194
12/01/47	5,194		5,194
03/01/48	5,194		5,194
06/01/48	5,194		5,194
09/01/48	5,194		5,194
12/01/48	5,194		5,194
03/01/49	5,194		5,194
06/01/49	5,194		5,194
09/01/49	5,194		5,194
12/01/49	5,195		5,195
	<b>800,000</b>	*	<b>800,000</b>

\*Plus a Quarterly administrative fee of \$1,006.47 for a total  
Administrative expense of \$154,996.38

(Form of)

ASSIGNMENT

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

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

BOND REGISTER

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF WILLIAMSTOWN  
SEWER REVENUE BOND, SERIES 2009 A  
(WEST VIRGINIA SRF PROGRAM)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. AR-1	\$800,000	December 9, 2009

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

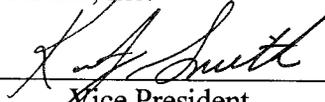
Name of Registered Owner:

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

Signature of Registrar:

United Bank, Inc.

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

  
Vice President

LAW OFFICES

**GOODWIN & GOODWIN, LLP**

300 SUMMERS STREET, SUITE 1500  
CHARLESTON, WEST VIRGINIA 25301-1678

P. O. Box 2107  
CHARLESTON, WEST VIRGINIA 25328-2107

TELEPHONE (304) 346-7000  
TELECOPIER (304) 344-9692

[www.goodwin-goodwin.com](http://www.goodwin-goodwin.com)

December 9, 2009

201 THIRD STREET  
PARKERSBURG, WEST VIRGINIA 26101  
(304) 485-2345

P.O. Box 349  
500 CHURCH STREET  
RIPLEY, WEST VIRGINIA 25271  
(304) 372-2651

City of Williamstown  
Williamstown, West Virginia

West Virginia Department of Environmental Protection  
Charleston, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Re: City of Williamstown, Sewer Revenue Bonds  
Series 2009 A (West Virginia SRF Program) and  
Series 2009 B (ARRA Program)

Ladies and Gentlemen:

We have served as bond counsel to the City of Williamstown (the "Issuer") in connection with the issuance of its Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) (the "Series 2009 A Bond") and Series 2009 B (ARRA Program) (the "Series 2009 B Bond" and, together with the Series 2009 A Bond, collectively, the "Bonds"), dated the date hereof.

We have examined certified copies of proceedings and other papers relating to the authorization of (i) the ARRA Assistance Agreement for the Bonds, dated December 9, 2009, including all schedules and exhibits attached thereto (the "Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP") and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Agreement.

The Series 2009 A Bond is issued in the principal amount of \$800,000, in the form of one bond, registered to the Authority, bearing no interest, with principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2011, all as set forth in the Schedule Y attached to the Agreement and incorporated in and made a part of the Bond. The Series 2009 A Bond is

# GOODWIN & GOODWIN, LLP

December 9, 2009

Page 2

subject to the SRF Administrative Fee equal to 1.0% of the principal amount of the Series 2009 A Bond as set forth in the Schedule Y attached to the Agreement and incorporated in and made a part of the Series 2009 A Bond.

The Series 2009 B Bond is issued in the principal amount of \$660,000, in the form of one bond, registered to the Authority, bearing interest at the rate of negative three percent (-3%) per annum, with principal forgiveness, with principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2011, all as set forth in the Schedule Y attached to the Agreement and incorporated in and made a part of the Series 2009 B Bond.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 16 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of constructing certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and a Bond Ordinance duly enacted by the Issuer on November 3, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on December 1, 2009 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued, and the Agreement is entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance and the Agreement when used herein.

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

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

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

GOODWIN & GOODWIN, LLP

December 9, 2009

Page 3

3. The Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority and the DEP or diminish the obligations of the Issuer, without the written consent of the Authority and the DEP.

4. The Issuer has legally and effectively enacted the Ordinance and all other necessary resolutions in connection with the issuance and sale of the Bonds. The Ordinance constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and a pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Prior Bonds, all in accordance with the terms of the Bonds and the Ordinance.

6. Under the Act, the Bonds and the interest thereon are exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

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

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

We have examined the executed and authenticated Bonds numbered AR-1 and BR-1 and in our opinion, the forms of said Bonds and their execution and authentication are regular and proper.

Respectfully submitted,

*Goodwin + Goodwin, LLP*  
GOODWIN & GOODWIN, LLP

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF WILLIAMSTOWN  
SEWER REVENUE BOND, SERIES 2009 B  
(ARRA PROGRAM)

No. BR-1

\$660,000

KNOW ALL MEN BY THESE PRESENTS: That CITY OF WILLIAMSTOWN, a municipal corporation, public corporation and political subdivision of the State of West Virginia in Wood County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of SIX HUNDRED SIXTY HUNDRED THOUSAND DOLLARS (\$660,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2011, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear interest at the rate of negative three percent (-3%) per annum, with principal forgiveness. 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").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and among the Issuer, the Authority and the DEP, dated December 9, 2009.

This Bond is issued (i) to pay a portion of the costs of acquiring, constructing and equipping certain improvements and extensions to the existing public sewerage facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing public sewerage facilities of the Issuer, the improvements and extensions constructed by the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on November 3, 2009, and a Supplemental Resolution duly adopted by the Issuer on December 1, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of

additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON PARITY AS TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT WITH THE ISSUER'S (1) \$15,551 SEWER REVENUE BOND, SERIES 1987A, (2), \$659,637 SEWER REVENUE BOND, SERIES 1987A1, (3) \$230,282 SEWER REVENUE BOND, SERIES 2005A, AND (4) \$800,000 SEWER REVENUE BOND, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM) (COLLECTIVELY, THE "PARITY BONDS"), AND SENIOR AND PRIOR TO THE ISSUER'S \$169,539 SEWER REVENUE BOND, SERIES 1987B (THE "SUBORDINATE PRIOR BOND").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holder of the Parity Bonds, and senior and prior to the Subordinate Prior Bond, from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2009 Bond Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds that may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2009 Bond Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Parity Bonds; provided however, that so long as there exists in the Series 2009 Bond Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Parity Bonds, an amount at least equal to the requirement therefore, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owner of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owner of this Bond are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

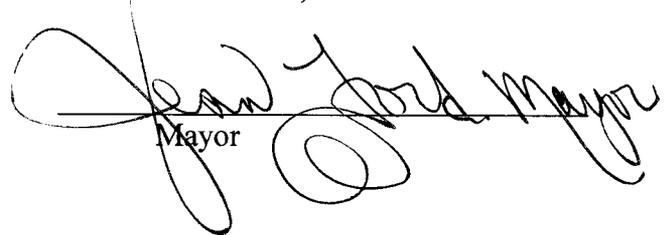
All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of constructing the Project and costs of issuance hereof described in the Bond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

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

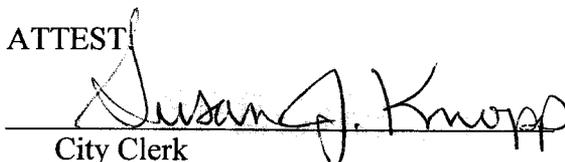
All provisions of the Bond Legislation, Ordinances and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, CITY OF WILLIAMSTOWN has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated December 9, 2009.

[SEAL]

  
Mayor

ATTEST

  
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Series 2009 B Bond described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: December 9, 2009.

UNITED BANK, INC, as Registrar

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

*Kap Smith*  
Vice President

(Form of)

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$20,000.00	12/9/09	(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	

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

EXHIBIT B

DEBT SERVICE SCHEDULE

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**BOND DEBT SERVICE**

City of Williamstown

10 Years

Dated Date 12/09/09

Delivery Date 12/09/09

Series B

<b>Period Ending</b>	<b>Debt Service</b>	<b>Principal Forgiveness</b>
12/09/09		
09/01/11	-16,500	-16,500
12/01/11	-16,500	-16,500
03/01/12	-16,500	-16,500
06/01/12	-16,500	-16,500
09/01/12	-16,500	-16,500
12/01/12	-16,500	-16,500
03/01/13	-16,500	-16,500
06/01/13	-16,500	-16,500
09/01/13	-16,500	-16,500
12/01/13	-16,500	-16,500
03/01/14	-16,500	-16,500
06/01/14	-16,500	-16,500
09/01/14	-16,500	-16,500
12/01/14	-16,500	-16,500
03/01/15	-16,500	-16,500
06/01/15	-16,500	-16,500
09/01/15	-16,500	-16,500
12/01/15	-16,500	-16,500
03/01/16	-16,500	-16,500
06/01/16	-16,500	-16,500
09/01/16	-16,500	-16,500
12/01/16	-16,500	-16,500
03/01/17	-16,500	-16,500
06/01/17	-16,500	-16,500
09/01/17	-16,500	-16,500
12/01/17	-16,500	-16,500
03/01/18	-16,500	-16,500
06/01/18	-16,500	-16,500
09/01/18	-16,500	-16,500
12/01/18	-16,500	-16,500
03/01/19	-16,500	-16,500
06/01/19	-16,500	-16,500
09/01/19	-16,500	-16,500
12/01/19	-16,500	-16,500
03/01/20	-16,500	-16,500
06/01/20	-16,500	-16,500
09/01/20	-16,500	-16,500
12/01/20	-16,500	-16,500
03/01/21	-16,500	-16,500
06/01/21	-16,500	-16,500
	<b>-660,000</b>	<b>-660,000</b>

(Form of)

ASSIGNMENT

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

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

BOND REGISTER

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF WILLIAMSTOWN  
SEWER REVENUE BOND, SERIES 2009 B  
(ARRA PROGRAM)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. BR-1	\$660,000	December 9, 2009

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

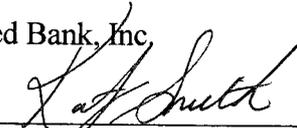
Name of Registered Owner:

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

Signature of Registrar:

United Bank, Inc.

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

  
Vice President

LAW OFFICES

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December 9, 2009

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City of Williamstown  
Williamstown, West Virginia

West Virginia Department of Environmental Protection  
Charleston, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Re: City of Williamstown, Sewer Revenue Bonds  
Series 2009 A (West Virginia SRF Program) and  
Series 2009 B (ARRA Program)

Ladies and Gentlemen:

We have served as bond counsel to the City of Williamstown (the "Issuer") in connection with the issuance of its Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) (the "Series 2009 A Bond") and Series 2009 B (ARRA Program) (the "Series 2009 B Bond" and, together with the Series 2009 A Bond, collectively, the "Bonds"), dated the date hereof.

We have examined certified copies of proceedings and other papers relating to the authorization of (i) the ARRA Assistance Agreement for the Bonds, dated December 9, 2009, including all schedules and exhibits attached thereto (the "Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP") and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Agreement.

The Series 2009 A Bond is issued in the principal amount of \$800,000, in the form of one bond, registered to the Authority, bearing no interest, with principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2011, all as set forth in the Schedule Y attached to the Agreement and incorporated in and made a part of the Bond. The Series 2009 A Bond is

# GOODWIN & GOODWIN, LLP

December 9, 2009

Page 2

subject to the SRF Administrative Fee equal to 1.0% of the principal amount of the Series 2009 A Bond as set forth in the Schedule Y attached to the Agreement and incorporated in and made a part of the Series 2009 A Bond.

The Series 2009 B Bond is issued in the principal amount of \$660,000, in the form of one bond, registered to the Authority, bearing interest at the rate of negative three percent (-3%) per annum, with principal forgiveness, with principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2011, all as set forth in the Schedule Y attached to the Agreement and incorporated in and made a part of the Series 2009 B Bond.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 16 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of constructing certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and a Bond Ordinance duly enacted by the Issuer on November 3, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on December 1, 2009 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued, and the Agreement is entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance and the Agreement when used herein.

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

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

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

GOODWIN & GOODWIN, LLP

December 9, 2009

Page 3

3. The Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority and the DEP or diminish the obligations of the Issuer, without the written consent of the Authority and the DEP.

4. The Issuer has legally and effectively enacted the Ordinance and all other necessary resolutions in connection with the issuance and sale of the Bonds. The Ordinance constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and a pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Prior Bonds, all in accordance with the terms of the Bonds and the Ordinance.

6. Under the Act, the Bonds and the interest thereon are exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

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

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

We have examined the executed and authenticated Bonds numbered AR-1 and BR-1 and in our opinion, the forms of said Bonds and their execution and authentication are regular and proper.

Respectfully submitted,

  
GOODWIN & GOODWIN, LLP



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December 9, 2009

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City of Williamstown  
Williamstown, West Virginia

West Virginia Department of Environmental Protection  
Charleston, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Re: City of Williamstown, Sewer Revenue Bonds  
Series 2009 A (West Virginia SRF Program) and  
Series 2009 B (ARRA Program)

Ladies and Gentlemen:

We have served as bond counsel to the City of Williamstown (the "Issuer") in connection with the issuance of its Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) (the "Series 2009 A Bond") and Series 2009 B (ARRA Program) (the "Series 2009 B Bond" and, together with the Series 2009 A Bond, collectively, the "Bonds"), dated the date hereof.

We have examined certified copies of proceedings and other papers relating to the authorization of (i) the ARRA Assistance Agreement for the Bonds, dated December 9, 2009, including all schedules and exhibits attached thereto (the "Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP") and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Agreement.

The Series 2009 A Bond is issued in the principal amount of \$800,000, in the form of one bond, registered to the Authority, bearing no interest, with principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2011, all as set forth in the Schedule Y attached to the Agreement and incorporated in and made a part of the Bond. The Series 2009 A Bond is

# GOODWIN & GOODWIN, LLP

December 9, 2009

Page 2

subject to the SRF Administrative Fee equal to 1.0% of the principal amount of the Series 2009 A Bond as set forth in the Schedule Y attached to the Agreement and incorporated in and made a part of the Series 2009 A Bond.

The Series 2009 B Bond is issued in the principal amount of \$660,000, in the form of one bond, registered to the Authority, bearing interest at the rate of negative three percent (-3%) per annum, with principal forgiveness, with principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2011, all as set forth in the Schedule Y attached to the Agreement and incorporated in and made a part of the Series 2009 B Bond.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 16 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of constructing certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and a Bond Ordinance duly enacted by the Issuer on November 3, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on December 1, 2009 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued, and the Agreement is entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance and the Agreement when used herein.

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

1. The Issuer is a duly created and validly existing municipality and is a public corporation and political subdivision of the State of West Virginia, with full power and authority to construct the Project, to operate and maintain the System, to adopt the Ordinance and to issue and sell the Bonds, all under the Act and other applicable provisions of law.
2. The Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer, enforceable in accordance with the terms thereof.

# GOODWIN & GOODWIN, LLP

December 9, 2009

Page 3

3. The Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority and the DEP or diminish the obligations of the Issuer, without the written consent of the Authority and the DEP.

4. The Issuer has legally and effectively enacted the Ordinance and all other necessary resolutions in connection with the issuance and sale of the Bonds. The Ordinance constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and a pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Prior Bonds, all in accordance with the terms of the Bonds and the Ordinance.

6. Under the Act, the Bonds and the interest thereon are exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

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

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

We have examined the executed and authenticated Bonds numbered AR-1 and BR-1 and in our opinion, the forms of said Bonds and their execution and authentication are regular and proper.

Respectfully submitted,

  
GOODWIN & GOODWIN, LLP



# MYERS LAW OFFICES

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C. BLAINE MYERS  
JESSICA E. MYERS

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December 9, 2009

City of Williamstown  
Williamstown, West Virginia

West Virginia Department of Environmental Protection  
Charleston, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Re: City of Williamstown  
Sewer Revenue Bonds  
Series 2009 A (West Virginia SRF Program) and  
Series 2009 B (ARRA Program)

Ladies and Gentlemen:

I am counsel to City of Williamstown (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Goodwin & Goodwin, LLP, as bond counsel, relating to the above-captioned bonds of the Issuer (the "Bonds"), the ARRA Assistance Agreement for the Bonds, dated December 9, 2009, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), a Bond Ordinance duly enacted by the City Council of the Issuer (the "Council") on November 3, 2009, as supplemented by a Supplemental Resolution duly adopted by the Council on December 1, 2009 (collectively, the "Ordinance"), the Charter of the Issuer and the election of members of the Council, and other documents relating to the Bonds and the Issuer. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the ARRA Assistance Agreement and the Ordinance when used herein.

I am of the opinion that:

1. The Issuer is a duly created and validly existing municipality and is a public corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the

December 9, 2009

Page 2

System, to enact the Ordinance and to issue the Bonds, all under the Act and other applicable provisions of law.

2. The members, officials and officers of the Issuer and Council have been duly and properly elected, have taken the requisite oaths and are thereby authorized to act on behalf of the Issuer in their respective capacities.

3. The ARRA Assistance Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the Authority and the DEP, constitutes a valid and binding agreement of the Issuer, enforceable in accordance with its terms.

4. The Ordinance has been duly enacted by the Council and is in full force and effect.

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

6. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates, registrations and authorizations necessary for the creation and existence of the Issuer and the issuance of the Bonds.

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

8. In reliance upon the Engineer's Certificate of Boyles & Hildreth, all successful bidders have made the required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon our 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:

December 9, 2009

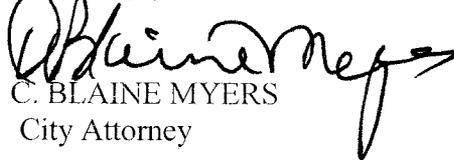
Page 3

(2) are adequate in form, substance and amount to protect the various interest of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Ordinance and the ARRA Assistance Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

The opinions given herein are all subject to the effect upon enforceability of any document under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or the exercise of judicial discretion or principles of equity in appropriate cases.

My opinion specifically excludes any matters involving the regulatory, tax, securities or public finance activities of the Issuer. This opinion is given for the benefit of those addressed on page 1 hereof, in connection with the Bonds, and may not be relied on by them for any other purpose or relied on by any other person, firm or corporation for any purpose whatsoever.

Very truly yours,

  
C. BLAINE MYERS  
City Attorney

CBM/abh



# MYERS LAW OFFICES

---

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December 9, 2009

City of Williamstown  
Williamstown, West Virginia

West Virginia Department of Environmental Protection  
Charleston, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Re: Final Title Opinion for City of Williamstown

Ladies and Gentlemen:

I am counsel to City of Williamstown (the "Issuer") in connection with a proposed project to construct improvements to its existing wastewater treatment plant (the "Project"). I provide this final title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Department of Environmental Protection (the "DEP") for the Project. Please be advised of the following:

1. The Issuer is a duly created and validly existing municipality possessed with all the powers and authority granted to municipalities under the laws of the State of West Virginia to construct, operate and maintain the Project as approved by the DEP.
2. The Issuer has obtained all necessary permits and approvals for the construction of the Project. In rendering this opinion, we have relied upon the Engineer's Certificate of Boyles & Hildreth, the consulting engineers for the Project.
3. 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 Boyles & Hildreth.

December 9, 2009

Page 2

4. No new property, easements or rights of way have to be acquired by the Issuer for the Project. The Issuer has heretofore acquired legal title or such other estate (such as a leasehold estate and agreement to exchange property) or interest in all of the necessary site components for the Project, including all easements and/or rights of way, sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the Project.

5. All easements and rights of way that have been acquired to date by the Issuer have been duly recorded in the Office of the Clerk of the County Commission of Wood County to protect the legal title to and interest of the Issuer.

Very truly yours,



C. BLAINE MYERS

City Attorney

City of Williamstown

CBM/abh



CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS  
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM)  
AND  
SERIES 2009 B (ARRA PROGRAM)

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. PUBLIC SERVICE COMMISSION ORDER
7. RATES
8. INCUMBENCY AND OFFICIAL NAME
9. LAND AND RIGHTS-OF-WAY
10. MEETINGS
11. INSURANCE
12. ARRA ASSISTANCE AGREEMENT
13. SPECIMEN BOND
14. PROCEEDS
15. CONFLICTS OF INTEREST
16. VERIFICATION OF SCHEDULE
17. PROCUREMENT OF ENGINEERING SERVICES
18. CLEAN WATER ACT
19. COUNTERPARTS

We, the undersigned MAYOR and CITY CLERK of the City of Williamstown (the "Issuer") and the undersigned ATTORNEY for the Issuer, hereby certify in connection with the City of Williamstown, Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Series 2009 B (ARRA Program) (collectively, the "Bonds" or the "Series 2009 Bonds"), dated the date hereof, as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance duly enacted by the Issuer on November 3, 2009, and the Supplemental Resolution duly adopted by the Issuer on December 1, 2009 (collectively, the "Ordinance"), the ARRA Assistance Agreement for the Series 2009 Bonds by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), dated December 9, 2009 (the "ARRA Assistance Agreement").

2. NO LITIGATION: No controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or

affecting in any manner the authorization, issuance, sale and delivery of the 2009 Bonds, the acquisition, construction and equipping of the Project, the operation of the System, the collection or use of the revenues of the System, the pledge and security of the Net Revenues for the Bonds and the Parity Bonds; nor affecting the validity of the 2009 Bonds or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the title of the officers of the Issuer or the City Council thereof to their respective offices; nor questioning any proceedings of the Issuer taken with respect to the authorization, issuance, sale or delivery of the 2009 Bonds, the acquisition, construction and equipping of the Project, the operation of the System, the collection or use of the revenues of the System, the pledge and security of the Net Revenues for the Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals, permits, exemptions, consents, authorizations, registrations, licenses, orders and certificates required by law for the creation and existence of the Issuer, the acquisition, construction and equipping of the Project, the operation of the System, the imposition of rates and charges and the issuance of the Series 2009 Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for the acquisition and construction of the Project have been solicited by the Issuer in accordance with Chapter 5, Article 22, Section 1 of the Code of West Virginia, 1931, as amended, which bids remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery of the ARRA Assistance Agreement. The Issuer has met all conditions set forth in the ARRA Assistance Agreement and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

The Series 2009 Bonds shall be issued on parity with the Parity Bonds with respect to liens, pledge and source of and security for payment and in all other respects. The Issuer has met the parity and coverage requirements of the Parity Bonds and the Prior Resolutions and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature. The Issuer has obtained (i) a certificate of an Independent Certified Public Accountant stating that the parity and coverage tests of the Parity Bonds have been met and (ii) the written consent of the Holder of the Parity Bonds to the issuance of the Series 2009 Bonds on parity with the Parity Bonds.

5. SIGNATURES AND DELIVERY: The undersigned Mayor and Clerk are the duly elected or appointed, qualified and acting officers of the Issuer as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Series 2009 Bonds for the Issuer. The seal impressed upon the Series 2009 Bonds and this Certificate is the duly authorized, proper and only seal of the Issuer. As of the date hereof, the undersigned Mayor officially signed the Series 2009 Bonds, upon original issuance of two separate bonds, dated the date hereof, by her manual signature; the undersigned Clerk officially caused the seal of the Issuer to be affixed upon the Series 2009 Bonds and attested by her manual signature; the Registrar officially registered, authenticated and delivered the Series 2009 Bonds

to a representative of the Authority as the original purchaser of the Series 2009 Bonds under the ARRA Assistance Agreement.

6. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Recommended Decision of the PSC entered on October 23, 2009, in Case No. 09-1062-S-CN, granting the Issuer a certificate of public convenience and necessity for the Project and approving financing for the acquisition, construction and equipping of the Project and the rates for the System. The time for appeal of the Recommended Decision entered on October 23, 2009, expired prior to the date hereof without any appeal having been filed. Such order remains in full force and effect.

The Issuer has duly published the required notice with respect to, among other things, the amounts of the Series 2009 Bonds to be issued, the interest rate and terms of the Series 2009 Bonds, the Project to be acquired and constructed and the cost of the Project.

7. RATES: The rates for the System, as adopted by the City Council, became effective on August 21, 2009.

8. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "City of Williamstown", and it is a municipal corporation organized and existing under the laws of, and a public corporation and political subdivision of, the State of West Virginia in Wood County of said State. The governing body of the Issuer is its City Council, consisting of five members, whose names and dates of commencement and termination of their current terms are as follows:

<u>Name</u>	<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Jean Ford	July 1, 2008	June 30, 2010
Martin Seuffer	July 1, 2006	June 30, 2010
Ronald Erb	July 1, 2006	June 30, 2010
Paul Jordan	July 1, 2008	June 30, 2012
Barbara Lewis	July 1, 2008	June 30, 2012

The duly elected or appointed officers of the Issuer are as follows:

Jean Ford, Mayor	July 1, 2008	June 30, 2010
Susan Knopp, Clerk	July 1, 2008	July 1, 2012

The duly appointed and acting attorney for the Issuer is Myers Law Offices of Parkersburg, West Virginia.

9. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition, construction and equipping of the

Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase or, if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions that would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties that may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Series 2009 Bonds.

10. MEETINGS: All actions, ordinances, resolutions, orders and agreements taken, enacted, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Series 2009 Bonds and the acquisition, construction, equipping, operation and financing of the Project or the System were authorized, enacted or adopted at meetings of the Issuer duly and regularly or specifically called and held pursuant to all applicable statutes, and a quorum of duly elected, appointed, qualified and/or acting members of the Issuer or City 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.

11. INSURANCE: The Issuer 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 Ordinance and the ARRA Assistance Agreement. All insurance for the System required by the Ordinance and the ARRA Assistance Agreement are in full force and effect.

12. ARRA ASSISTANCE AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the ARRA Assistance Agreement are true and correct in all material respects as if made on the date hereof; (ii) the ARRA Assistance Agreement does not contain any untrue statements of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the ARRA Assistance Agreement, which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading; and (iv) the Issuer is in compliance with the ARRA Assistance Agreement.

13. SPECIMEN BONDS: Attached hereto as Exhibit A are specimens of the 2009 Bonds that, except as to execution and authentication, are identical in all respects with the Series 2009 Bonds this day delivered to the Authority and being substantially in the forms prescribed in the Ordinance.

14. PROCEEDS: On the date hereof, the Issuer received \$102,823.00 and \$20,000.00 from the Authority and the DEP, being portion of the principal amounts of the Series 2009 Bonds. The balance of the principal amounts of the Series 2009 Bonds will be advanced to the Issuer from time to time as acquisition, construction and equipping of the Project progresses.

15. CONFLICTS OF INTEREST: No member of City Council, official, officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or the sale of any land, materials, supplies or services to the Issuer, or to any contractor supplying the Issuer, relating to the Series 2009 Bonds, the Ordinance and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

16. VERIFICATION OF SCHEDULE: The final amended Schedule A attached to the Certificate of Consulting Engineer, with the signature of the Mayor and the Consulting Engineer, accurately represents the estimated costs of the acquisition, construction and equipping of the Project, the sources of funds available to pay the costs of the Project and the costs of financing of the Series 2009 Bonds.

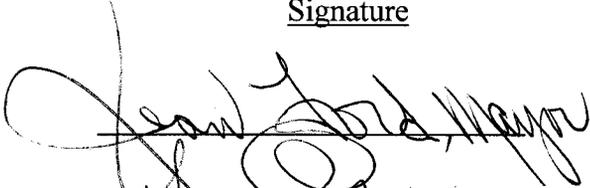
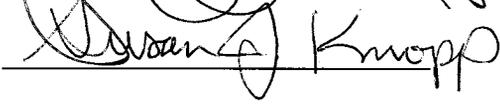
17. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied with all the requirements of Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended, in the procurement of the engineering services of the Consulting Engineer.

18. 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 counterparts and all counterparts shall be deemed to be the Certificate.

WITNESS our signatures and the official corporate seal of City of Williamstown  
as of the 9<sup>th</sup> day of December, 2009.

[SEAL]

<u>Signature</u>	<u>Official Title</u>
 _____	Mayor
 _____	City Clerk
_____	Attorney

WITNESS our signatures and the official corporate seal of City of Williamstown  
as of the 9<sup>th</sup> day of December, 2009.

[SEAL]

Signature

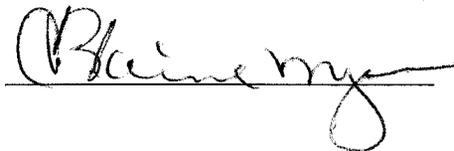
Official Title

\_\_\_\_\_

Mayor

\_\_\_\_\_

City Clerk



Attorney

EXHIBIT A

See Specimen Bonds (Tab No. 8)

80000 SERIES  
30% P.C.W.  
 MILLER-PAX  
RECYCLED

CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS  
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM)  
AND  
SERIES 2009 B (ARRA PROGRAM)

ENGINEER'S CERTIFICATE

I, James B. Hildreth, P.E., of Boyles and Hildreth Consulting Engineers, Spencer, West Virginia, a Registered Professional Engineer, West Virginia License No. 7719, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain improvements and extensions (the "Project") to the existing public sewer facilities (the "System") of City of Williamstown (the "City"), to be constructed in Wood County, West Virginia, which project is being financed in part by the above-captioned revenue bonds (the "Bonds") of the City. Capitalized terms used and not otherwise defined herein shall have the meaning assigned to such terms in the Bond Ordinance enacted by the City Council of the City (the "Council") on November 3, 2009, and the Supplemental Resolution adopted by the Council on December 1, 2009 (collectively, the "Ordinance"), and the Loan Agreement by and among the City, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection ("DEP") dated December 9, 2009 (the "Loan Agreement").

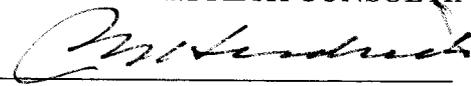
2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquiring and constructing the Project and (ii) paying costs of issuance and related costs.

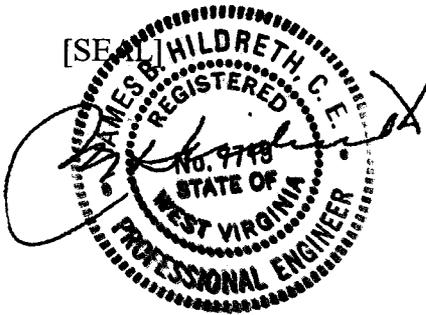
3. To the best of my knowledge, information and belief (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP, and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and will have a useful life of at least 40 years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule A attached hereto as Exhibit A, and all successful bidders have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy; (iv) based upon our review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, the surety bonds and policies are adequate in form, substance and amount to protect the various interests of the City; (v) the successful bidders received any and all addenda to the original bid documents; (vi) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vii) the successful bids include prices for every item on such bid forms; (viii) the uniform bid procedures were followed; (ix) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and

operation of the System; (x) in reliance upon the certificate of Lisa Thornburg, CPA of even date herewith, as of the effective date thereof, the rates and charges for the System as approved by the Public Service Commission of West Virginia and adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (xi) 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 therefore, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; (xii) the City has obtained all right-of-ways, deeds and/or contracts to purchase and/or exchange land needed to construct the Project and operate the System; and (xiii) attached hereto as Exhibit A is the final amended "Schedule A-Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal as of the 9<sup>th</sup> day of December, 2009.

BOYLES AND HILDRETH CONSULTING ENGINEERS

By:   
West Virginia License No. 7719



**WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL**

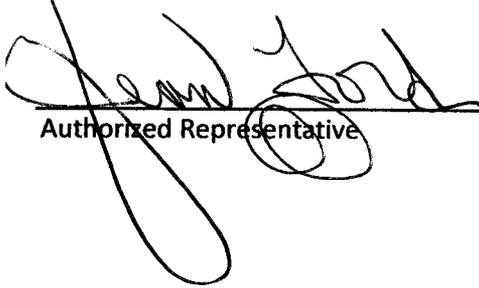
**SCHEDULE B--TOTAL PROJECT**

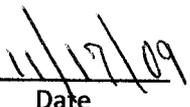
CITY OF WILLIAMSTOWN - WWTP IMPROVEMENTS

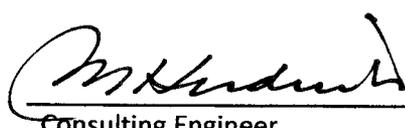
SRF No. C-544335-02, IJDC 2007S-992

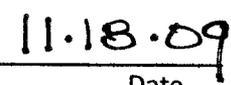
**COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING**

<b>A. Cost of Project</b>		<b>Total</b>	<b>WV DEP - Stimulus</b>	<b>WVDEP SRF (38yr, 0%, 1%)</b>
1.	Construction	1,168,941	640,000	528,941
2.	Technical Services			
	a. Basic Services	110,250	-	110,250
	b. Special Services	17,500	-	17,500
	c. Inspection Services	55,000	-	55,000
3.	Legal & Fiscal			
	a. Local Counsel	3,500		3,500
	b. PSC Counsel	2,000		2,000
4.	Sites and Other Lands	-	-	-
5.	Miscellaneous			
	a. Administrative	17,500	-	17,500
	b. Accountant	6,800	-	6,800
6.	Interim Financing	-	-	-
7.	Contingency	58,509		58,509
8.	<b>Total of Lines 1 through 7</b>	<b>1,440,000</b>	<b>640,000</b>	<b>800,000</b>
<b>B. Cost of Financing</b>				
9.	Capitalized Interest			
10.	Other Costs			
	a. Bond Counsel	19,500	19,500	-
	b. Bank Registrar Fee	500	500	-
	c. Funded Reserve	-	-	-
11.	<b>Total Cost of Financing</b>	<b>20,000</b>	<b>20,000</b>	<b>-</b>
12.	<b>TOTAL PROJECT COST (line 8 plus line 11)</b>	<b>1,460,000</b>	<b>660,000</b>	<b>800,000</b>
<b>C. Sources of Funds</b>				
13.	Federal Grants:	-	-	-
14.	State Grants	-	-	-
15.	Other	-	-	-
16.	<b>TOTAL GRANTS</b>	<b>-</b>	<b>-</b>	<b>-</b>
17.	Size of Bond Issue	1,460,000	660,000	800,000

 \_\_\_\_\_  
 Authorized Representative

 \_\_\_\_\_  
 Date

 \_\_\_\_\_  
 Consulting Engineer

 \_\_\_\_\_  
 Date

80000 SERIES  
30% P.C.W.  
 RECYCLED

**LISA K. THORNBURG, CPA**

2514 BEDFORD CHAPEL ROAD

MILTON, WV 25541

(304) 743-8192

ThornburgCPA@aol.com

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December 9, 2009

CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS  
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM)  
AND  
SERIES 2009 B (ARRA PROGRAM)

CERTIFIED PUBLIC ACCOUNTANT'S CERTIFICATE

City of Williamstown  
Williamstown, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

West Virginia Division of Environmental Protection  
Charleston, West Virginia

Ladies and Gentlemen:

I have reviewed the sewer rates of City of Williamstown (the "Issuer"), as approved by the order of the Public Service Commission of West Virginia entered October 23, 2009, in Case No. 09-1062-S-CN, the projected operating expenses and the anticipated customer usage provided by Boyles & Hildreth, the consulting engineer of the Issuer. It is my opinion that such rates are sufficient (i) to provide for all operating expenses of the sewer facilities of the Issuer (the "System") and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Issuer's (a) \$15,551 City of Williamstown, Sewer Revenue Bond, Series 1987A; (b) \$169,539 City of Williamstown, Sewer Revenue Bond, Series 1987B; (c) \$659,637 City of Williamstown, Sewer Revenue Bond, Series 1987A1; and (d) \$230,282 City of Williamstown, Sewer Revenue Bond, Series 2005A (collectively, the "Prior Bonds"), and its Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Series 2009 B (ARRA Program) (collectively, the "Series 2009 Bonds").

It is further my opinion that the Net Revenues for the fiscal year following the year in which the Series 2009 Bonds are to be issued will be at least 115% of the average annual debt service requirements on the Prior Bonds and the Series 2009 Bonds.

It is further my opinion that the Net Revenues actually derived from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Series 2009 Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Series 2009 Bonds, will not be less than 115% of the maximum annual amount which will mature and become due in any succeeding year for principal of and interest on the Prior Bonds and the Series 2009 Bonds.

Very truly yours,

A handwritten signature in cursive script that reads "Lisa K. Thornburg".

LISA K. THORNBURG, CPA

80000 SERIES  
30% P.C.W.



CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS  
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM)  
AND  
SERIES 2009 B (ARRA PROGRAM)

CERTIFICATE OF CITY CLERK AS TO TRUTH  
AND ACCURACY OF DOCUMENTS DELIVERED

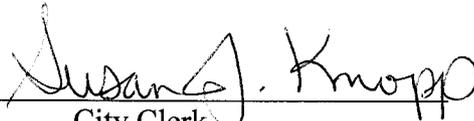
I, Susan Knopp, the duly elected City Clerk of the City of Williamstown (the "City"), hereby certify that the copies of the following documents being delivered in connection with the closing of the sale of the City of Williamstown, Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Series 2009 B (ARRA Program), 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. Bond Ordinance enacted on November 3, 2009.
2. Supplemental Resolution adopted on December 1, 2009.
3. ARRA Assistance Agreement dated December 9, 2009.
4. Public Service Commission Recommended Decision entered on October 23, 2009.
5. Infrastructure and Jobs Development Council Approval.
6. Charter of the City of Williamstown.
7. Oaths of Office of Mayor, City Clerk and Council Members.
8. Minutes on Adoption of Bond Ordinance and Supplemental Resolution.
9. Affidavits of Publication and Abstract of Bond Ordinance and Notice of PSC Filing.
10. 1987 Bond Resolution.
11. 2005 Bond Resolution.
12. Water Development Authority Consent to Issuance of Parity Bonds.
13. Evidence of Insurance.

14. NPDES Permit.

WITNESS my signature and the official seal of the City of Williamstown as of the 9<sup>th</sup> day of December, 2009.

(SEAL)

  
City Clerk

**MILLER-FAX**  
80000 SERIES  
30% P.C.W.  
**RECYCLED** 

CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS  
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM)  
AND  
SERIES 2009 B (ARRA PROGRAM)

CERTIFICATE AS TO USE OF PROCEEDS

The undersigned Mayor of the City of Williamstown in Wood County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Series 2009 B (ARRA Program), of the Issuer, dated December 9, 2009 (collectively, the "Bonds"), hereby certifies as follows:

1. I am one of the officers of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and am duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance duly enacted by the Issuer on November 3, 2009, and supplemented by a Supplemental Resolution adopted by the Issuer on December 1, 2009 (collectively, the "Bond Ordinance"), authorizing the Bonds.

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

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on December 9, 2009, the date on which the Bonds are being physically delivered in exchange for a portion of the principal amounts of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. In the Bond Ordinance pursuant to which the Bonds are issued, the Issuer has covenanted that it shall not take, or permit or suffer to be taken, any action with respect to Issuer's use of the proceeds of the Bonds that would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (collectively, the "Code"), issued by the West Virginia Water Development Authority (the "Authority"), to lose their status as tax-exempt bonds. The Issuer hereby covenants to take all actions necessary to comply with such covenant.

5. The Bonds were sold on December 9, 2009, to the Authority, pursuant to a Loan Agreement dated December 9, 2009, by and among the Issuer, the Authority and West Virginia Department of Environmental Protection ("DEP"), for the aggregate purchase prices of \$800,000 and \$660,000 (100% of par), at which time, the Issuer received \$102,823.00 and \$20,000.00 from the Authority and DEP, being a portion of the principal amounts of the Bonds. No accrued interest has been or will be paid on the Bonds. The balance of the principal amount

of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquiring, constructing and equipping certain improvements and extensions to the existing public sewer facilities of the Issuer (the "Project"); and (ii) paying certain costs of issuance of the Bonds and related costs.

7. The Issuer shall, on the date hereof or immediately hereafter, enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Bonds for the acquisition, construction and equipping of the Project, constituting a substantial binding commitment, or has already done so. The acquisition, construction and equipping of the Project and the allocation of the net sale proceeds of the Bonds to expenditures of the Project shall commence immediately and shall proceed with due diligence to completion, and all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of the Project on or before July 1, 2010. The acquisition, construction and equipping of the Project is expected to be completed by March 1, 2011.

8. The total cost of the Project is estimated at \$1,460,000. Sources and uses of funds for the Project are as follows:

SOURCES

Series 2009 A Bond Proceeds	\$ 800,000
Series 2009 B Bond Proceeds	<u>660,000</u>
Total Sources	<u>\$1,460,000</u>

USES

Project Costs	\$1,440,000
Cost of Issuance	<u>20,000</u>
Total Uses	<u>\$1,460,000</u>

9. Pursuant to Article V of the Bond Ordinance, the following special funds have been created or continued with respect to the Bond:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;
- (3) Series 2009 Bonds Sinking Fund;
- (4) Series 2009 Bonds Reserve Account; and
- (5) Series 2009 Construction Trust Fund.

10. Pursuant to Article VI of the Bond Ordinance, all of the proceeds of the Bonds will be deposited in the Series 2009 Construction Trust Fund and applied solely to payment of costs of the Project, including costs of issuance of the Bonds and related costs, and for no other purpose.

11. Moneys held in the Series 2009 Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Bonds and will not be available to meet costs of acquisition, construction and equipping of the Project.

12. The acquisition, construction and equipping of the Project will proceed with due diligence to completion. The acquisition, construction and equipping of the Project is expected to be completed within 24 months of the date hereof. All proceeds of the Bonds will be expended on the Project within 36 months from the date hereof

13. The Issuer will take such steps as requested by the Authority to ensure that the Authority's bonds meet the requirements of the Code.

14. The Issuer does not expect to sell or otherwise dispose of the Project in whole or in part prior to the last maturity date of the Bonds.

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

16. All property financed with the proceeds of the Bonds will be owned and held by (or on behalf of) a qualified governmental unit.

17. No proceeds of the Bonds will be used, directly or indirectly, in any trade or business carried on by any person who is not a governmental unit.

18. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue. The Issuer covenants that it shall maintain thorough and accurate accounting records, in conformance with generally accepted accounting principles, relative to the proceeds of the Bonds so that use of proceeds from the Bonds can be accounted for.

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

20. The Bonds are not federally guaranteed.

21. The Issuer has retained the right to amend the Bond Ordinance authorizing the issuance of the Bonds if such amendment is necessary to assure that the Bonds remain a governmental or public purpose bond.

22. The Issuer has either (a) funded the Series 2009 Bonds Reserve Account at the maximum amount of principal which will mature and become due on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Series 2009 Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until the Series 2009 Bonds Reserve Account holds an amount equal to the maximum amount of principal which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Series 2009 Bonds Reserve Account and the

Series 2009 Bonds Sinking Fund will be used solely to pay principal of the Bonds and will not be available to pay costs of the Project.

23. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with the Bonds, and (c) will be paid out of substantially the same sources of funds of funds or will have substantially the same claim to be paid out of substantially the same sources of funds as the Bonds.

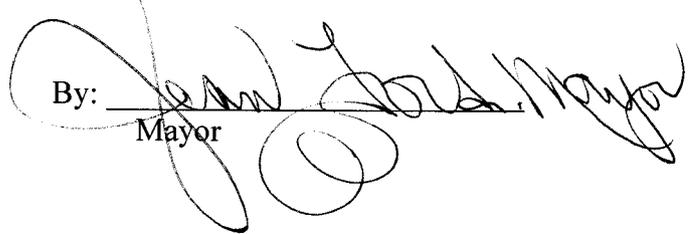
24. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances that would materially change the expectations herein expressed.

25. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Bonds, rebates and rebate calculations.

26. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

WITNESS my signature as of this 9<sup>th</sup> day of December, 2009.

CITY OF WILLIAMSTOWN

By:   
Mayor

thence S. 83 degrees W. 12 and 61/100 chains across said river; thence S. 32 degrees W. 7 chains; thence S. 46 degrees 30' W. 9 chains; thence 66 degrees W. 27 chains; thence 62 degrees W. 12 and 50/100 chains; thence S. 56 degrees W. 8 and 88/100 chains; thence S. 42 degrees E. 22 chains crossing the Ohio river to the place of beginning, containing 969 and 35/100 acres including the Ohio river, which contains 315 and 20/100 acres, containing exclusive of the Ohio river 654 and 15/100 acres, in said boundary, which territory is situated in the district of Williams, in the County of Wood and State of West Virginia. (Acts 1921 (Munl. ch.), ch. 30, § 2.)

Sec. 3. Applicability of state general and special laws; continuity of ordinances, etc., of former Town of Williamstown.

All general and special laws of the State of West Virginia, governing cities and towns and now [April 19, 1921] applicable and not inconsistent with the provisions of this act, [Charter], shall apply to and govern the City of Williamstown. All by-laws, ordinances and resolutions lawfully passed and in force in the Town of Williamstown under its former organization, and not inconsistent herewith, shall remain in force throughout the City of Williamstown until altered or repealed by the council elected under the provisions of this act [Charter]. All rights and property heretofore vested in said Town of Williamstown are continued and preserved in its title and property vested in said City of Williamstown and no right or liability, either in favor of or against, the said Town of Williamstown at the time this act takes effect [90 days from April 19, 1921], and no suit or prosecution of any kind, shall be effected by such change, unless otherwise provided for in this act [Charter]. (Acts 1921 (Munl. ch.), ch. 30, § 3.)

Sec. 4. Mayor and four councilmen at large constitute city council; governing body; election date and terms of office; filling vacancies.

The governing body of the city shall be a council composed of a mayor and four councilmen who shall be elected at large. Elections shall be held in the city every two years on the Tuesday after the first Monday in June of each odd-numbered year. The first election under this section as hereby amended shall be held on the Tuesday after the first Monday in June, 1973.

At the said first election as herein provided, a mayor and four councilmen shall be elected. The mayor shall serve for a term of two years. The two candidates for councilman receiving the highest and second highest number of votes cast shall serve for a term of four years. The two candidates for councilman receiving the third highest and fourth highest number of votes cast shall serve for a term of two years. The terms of office of the incumbent mayor and all incumbent councilmen at the time of the adoption of this Charter amendment [Oct. 17, 1972] shall terminate at the commencement of the terms of the newly-elected mayor and councilmen as herein provided. At all subsequent elections held in the said city under this section as amended, there shall be a mayor who shall serve for two years and two councilmen who shall serve for four years. The terms of office of all elected officers hereunder shall begin on the second Monday after their election.

poration therein; and the same may grant, sell, convey, transfer, let and assign, pledge, mortgage, charge and encumber in any case, and in any manner, in which it would be lawful for a private individual so to do, subject to the limitations and provisions of the Constitution of the state; and may have and use a common seal and alter and renew the same at pleasure; and generally shall have all the rights, franchises, capacities and powers appertaining to like corporations in this state, and shall have and succeed to all powers, franchises and immunities, rights and privileges, which were conferred upon or belonged or appertained to the Town of Williamstown by virtue of any act or acts of the general assembly of the State of Virginia or of the legislature of this state heretofore passed; and shall have all the rights, privileges, capacities and powers provided by chapter 47 of the Code of West Virginia, as contained in the edition of the year 1899 and for which provision is not herein otherwise expressly made. (Acts 1921 (Munl. ch.), ch. 30, § 1.)

*Editor's note.* --The reference to chapter 47 of the Code of "1899" appears to relate to chapter 47 of the Code of 1906, captioned, "Cities, towns and villages," the subject matter of which is now contained in W. Va. Code, chapter 8.

#### Sec. 2. Corporate limits.

The corporation limits and boundary of said City of Williamstown shall be as follows:

Beginning at a point on the bank of the Ohio river on the land of the heirs of George Henderson, deceased, from which an elm 40 inches in diameter bearing N. 65 degrees 30' E. 2 31/100 chains distant; and running thence from said point, S. 42 degrees E. 45 chains to a point where a hickory 20 inches in diameter bears S. 16 degrees and 30' W. 16 links distant and a hickory 18 inches in diameter bears S. 75 degrees E. 71 links distant; thence S. 64 degrees and 30' E. 40 chains and 45/100 to a point in line between Biddle and Spies where a hickory 14 inches in diameter bears N. 65 degrees and 30' E. 19 links distant, and a white oak 14 inches in diameter bears S. 8 degrees and 30' W. 25 links distant; thence with said line N. 38 degrees E. 6 70/100 chains to a stake near a corner to lands of Spies and Ruf; thence N. 64 degrees and 10' E. 31 and 30/100 chains to the east line of Joseph Bush; thence N. 34 degrees and 20' E. 11 and 20/100 chains with his line to a stone at the south-east corner of lands of said Bush; thence N. 58 degrees W. 1 4/100 chains with another of his lines; thence with the line between Wanless and Arbour N. 26 degrees E. 43 and 87/100 chains to the Ohio river; and thence same course continued 10 35/100 chains to the island known as Kerr's Island; thence same course 4 88/100 chains across the said island; thence same course 11 and 90/100 chains to low water line on the Ohio side; thence down the river and with the meanders thereof N. 64 degrees W. 6 chains; thence N. 69 degrees W. 20 chains; thence N. 79 degrees W. 12 chains; thence N. 84 degrees 30' W. 11 chains; thence N. 88 degrees 30' W. 10 and 92/100 chains; thence 84 degrees W. 7 50/100 chains; thence S. 83 degrees 10' W. 19 and 4/100 chains to the mouth of the Muskingum river;

- § 17. "Officers," "franchise" and "electors," as used in Charter, defined.
- § 18. Power of council to levy and collect taxes on real and personal property, and to grant licenses and collect license taxes thereon.
- § 19. Paving and sewerage; two-thirds of cost to be paid by property owners; street railways' part; one-tenth to be paid each year; cost a lien upon property; statements of assessments to be recorded in office of clerk of county court; default in payment, how collected; notices describing improvements and property giving amount of assessments to be published; grievances; council to appoint day for hearing; bonds for pavements, sidewalks and sewers; how same are to be issued; not to be sold for less than par; payable in ten years; assessments applied to liquidation; debts not to exceed five per centum of taxable property; to be submitted to voters and receive three-fifths of votes cast; issue not to exceed amount authorized by election; chapter forty-seven-a of the code to apply; plans, specifications, profiles and estimates to be on file for examination; notice giving nature of work and manner of payment to be published.
- § 20. Limited authority to levy annual tax on real and personal property for paving and for sewer construction.
- § 21. Procedure for recall of elected officer and to elect a successor; person sought to be recalled may be candidate to succeed himself.
- § 22. Initiative and referendum; ordinances adopted by vote of electorate may be repealed only by vote of electorate.
- § 23. Effective date of ordinances and franchises and required posting thereof; suspension from operation upon protest of twenty per centum of voters; submission to election.
- § 24. Petitions to be signed by legal voters only, supported by affidavit.
- § 25. Reiteration of authority of council to levy annual tax on real and personal property; other taxing authority; taxes to be uniform; limitation on taxation.
- § 99. Authority to acquire and equip various public utilities, parks, buildings, etc., and to issue and sell bonds for such purpose subject to conditions and limitations herein specified.

Sec. 1. "The City of Williamstown" incorporated; corporate powers generally.

The inhabitants of so much of the County of Wood as is within the bounds prescribed by section 2 of this act, [charter], and their successors, shall be and remain and they are hereby constituted a body politic and corporate, by the name of "The City of Williamstown", and as such, and by that name shall have perpetual succession and a common seal and may contract and be contracted with, sue and be sued, plead and be impleaded, answer and be answered unto, and may purchase, take, receive, hold and use goods and chattels, lands and tenements, and choses in action, or any interest, right or estate therein, either for the proper use of said city or in trust for the benefit of any person or cor-

Williamstown City Code

*Section 8-1-6, therefore, sets forth certain rules to be applied, in addition to the usual and ordinary rules of statutory construction, with respect to construction and applicability of legislative charters, and it is suggested that users of this city Code refer to W. Va. Code, § 8-1-6, in determining the present construction and applicability of any portion of the Williamstown Charter to any given situation.*

*For state law as to revising or amending a municipal charter, see W. Va. Code, §§ 8-4-7, 8-4-8.*

- § 1. "The City of Williamstown" incorporated; corporate powers generally.
- § 2. Corporate limits.
- § 3. Applicability of state general and special laws; continuity of ordinances, etc., of former Town of Williamstown.
- § 4. Mayor and four councilmen at large constitute city council; governing body; election date and terms of office; filling vacancies.
- § 5. "General election;" announcement of candidacies; printing of ballots; conduct of elections; determination of results, etc.
- § 6. Composition of council; voting in council; quorum; recording of votes; presiding officer; authentication of acts of the council.
- § 7. Powers of council and its members; certain departments established and powers and duties defined; assignment of personnel; rules and regulations.
- § 8. Mayor as ex officio department head and city judge; designation of other department heads; appointment of other city officers; removal of city officers.
- § 9. Authority of council to create, fill and discontinue other positions and to provide compensation therefor.
- § 10. Office or offices for mayor and council; compensation of mayor, councilmen and all other officers and employees, and how paid.
- § 11. Council meetings; president and vice president of council; reports to council by mayor; who acts for absent or disabled mayor.
- § 12. Certain ordinances to be available for public inspection in final form one week before passage; limitations on granting of franchises.
- § 13. Prohibited taking of gifts or accepting of services by city officers and employees; contracts void when in violation of this section.
- § 14. Authority of council to create civil service board and to establish civil service throughout city.
- § 15. Authority of council to publish receipts and expenditures; annual audit of all city books and accounts, and publication of results.
- § 16. Special appropriations authority of city council elected in 1921; section now obsolete.

PART I.

THE CHARTER.

Editor's note.--The Charter herein set out is as enacted by the legislature, acts 1921 (Munl. ch.) chapter 30, passed April 19, 1921, approved by the governor April 20, 1921, effective ninety days from passage, as subsequently amended by the legislature and by Home Rule Ordinances, and each section is followed by an historical citation indicating the derivation of the section. The frontal section analysis differs somewhat from that of chapter 30 of the 1921 Act, so as to more fully disclose the contents, and section catch-lines have been added in accord therewith, none of which is to be regarded as official. Similarly, the editors have inserted some words in brackets; they have adopted a uniform system of capitalization, and have used Arabic numerals instead of spelling out dates.

The legislature, in its 1969 revision and consolidation of chapters 8 and 8A of the Code of West Virginia into a new chapter 8, recognized, in section 8-1-6, "that when the provisions of existing special legislative charters are compared with and are considered in the light of the provisions of this chapter [i.e., the new chapter 8], there are five basic possibilities as to the relationship between such charter provisions and the provisions of this chapter, namely: (1) As to any particular charter provisions, such charter provisions may be inconsistent or in conflict with the pertinent provisions of this chapter; (2) although relating to the same subject matter and although not inconsistent or in conflict with any provisions of this chapter, certain charter provisions may be sufficiently different from pertinent provisions of this chapter as to indicate, as a matter of practical construction, that either the charter provisions or the provisions of this chapter, but not both, should be applicable; (3) although varying in certain respects, certain charter provisions may be similar to and in essential harmony with corresponding provisions of this chapter; (4) as to any particular charter provisions, there may be no counterpart of such provisions in this chapter; and (5) as to any provisions of this chapter, there may be no counterpart charter provisions."

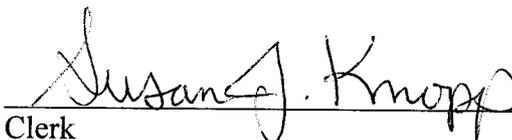
STATE OF WEST VIRGINIA,

COUNTY OF WOOD, to-wit:

I, SUSAN KNOPP, do hereby certify that I am the duly qualified and acting Clerk of the City of Williamstown.

I further certify that attached hereto is a portion of the Charter of the City of Williamstown, West Virginia (the "City"), that describes the incorporation and formation of the City, which Charter remains in full force and effect with no changes, insertions, amendments or modifications having been made thereto affecting the status of the City's incorporation or its ability to exercise its sovereign powers.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and affixed the seal of the City of Williamstown as of the 1<sup>st</sup> day of December, 2009.

  
Clerk

(SEAL)





**OATH OF OFFICE**

**I, Jean Ford,**

Do hereby solemnly swear

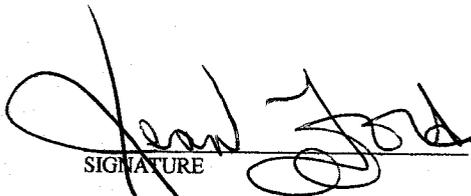
To support the Constitution of the United States of America,

And the Constitution, of the State of West Virginia,

And perform the duties of Mayor

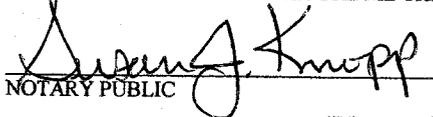
For the City of Williamstown, West Virginia

To the best of my ability, so help me God.

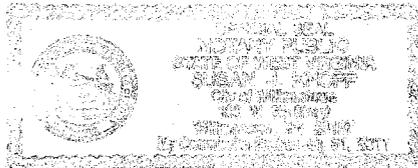
  
SIGNATURE

  
WITNESS

SUBSCRIBED AND SWORN BEFORE ME THIS 1 DAY OF July, 2008.

  
NOTARY PUBLIC

July 31, 2011  
MY COMMISSION EXPIRES



**OATH OF OFFICE**

**I, Barbara Lewis,**

Do hereby solemnly swear

To support the Constitution of the United States of America,

And the Constitution, of the State of West Virginia,

And perform the duties of Councilperson

For the City of Williamstown, West Virginia

To the best of my ability, so help me God.

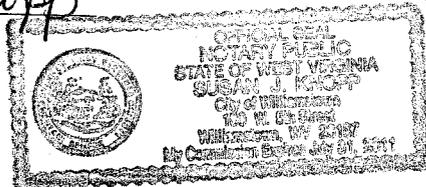
*Barbara Lewis*  
SIGNATURE

*Paul Ford*  
WITNESS

SUBSCRIBED AND SWORN BEFORE ME THIS 1 DAY OF July, 2008

*Susan J Knopp*  
NOTARY PUBLIC

July 31, 2011  
MY COMMISSION EXPIRES:



**OATH OF OFFICE**

**I, Paul Jordan,**

**Do hereby solemnly swear**

**To support the Constitution of the United States of America,**

**And the Constitution, of the State of West Virginia,**

**And perform the duties of Councilperson**

**For the City of Williamstown, West Virginia**

**To the best of my ability, so help me God.**

  
SIGNATURE

  
WITNESS

SUBSCRIBED AND SWORN BEFORE ME THIS 1 DAY OF July, 2008.

  
NOTARY PUBLIC

June 13, 2011  
MY COMMISSION EXPIRES:



**OATH OF OFFICE**

**I, Marty Seufer,**

do hereby solemnly swear

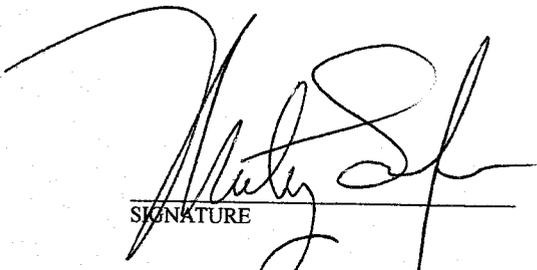
to support the Constitution of the United States of America,

and the Constitution, of the State of West Virginia,

and perform the duties of Councilperson

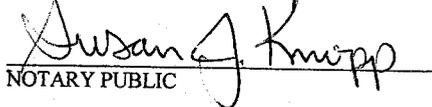
for the City of Williamstown, West Virginia

to the best of my ability, so help me God.

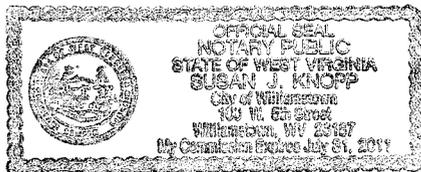
  
SIGNATURE

  
WITNESS

SUBSCRIBED AND SWORN BEFORE ME THIS 6<sup>th</sup> DAY OF July, 2006.

  
NOTARY PUBLIC

July 31, 2011  
MY COMMISSION EXPIRES:



**OATH OF OFFICE**

**I, Ron Erb,**

do hereby solemnly swear

to support the Constitution of the United States of America,

and the Constitution, of the State of West Virginia,

and perform the duties of Councilperson

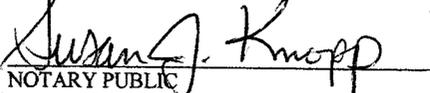
for the City of Williamstown, West Virginia

to the best of my ability, so help me God.

  
SIGNATURE

  
WITNESS

SUBSCRIBED AND SWORN BEFORE ME THIS 6 DAY OF July, 2006.

  
NOTARY PUBLIC

July 31, 2011  
MY COMMISSION EXPIRES:



# OATH OF OFFICE

I, Susan Knopp,

do hereby solemnly swear

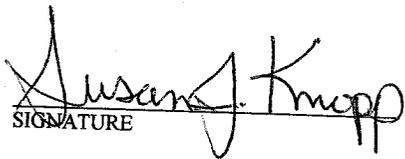
to support the Constitution of the United States of America,

and the Constitution, of the State of West Virginia,

and perform the duties of City Clerk

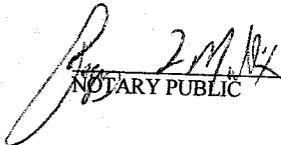
for the City of Williamstown, West Virginia

to the best of my ability, so help me God.

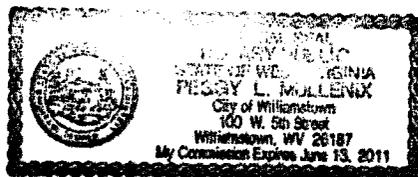
  
SIGNATURE

  
WITNESS

SUBSCRIBED AND SWORN BEFORE ME THIS 18<sup>th</sup> DAY OF January, 2005.

  
NOTARY PUBLIC

06-13-2011  
MY COMMISSION EXPIRES:





WILLIAMSTOWN CITY COUNCIL  
REGULAR MEETING  
NOVEMBER 3, 2009

The Williamstown City Council met in regular session on Tuesday, November 3, 2009, at 7:30 PM. Those in attendance were Mayor Jean Ford, Councilpersons Marty Seufer, Ron Erb and Barbara Lewis, City Attorney Blaine Myers, and City Clerk/Treasurer Susan Knopp. Councilperson Paul Jordan was absent.

Mayor Ford called the meeting to order and led Council in the Pledge of Allegiance.

On a motion by Lewis and second by Erb to approve and dispense with the reading of the minutes of the previous meeting, all voted yes.

On a motion by Erb and second by Lewis to approve the current bills for payment, all voted yes.

On a motion by Erb and second by Seufer to approve the second reading of a bond ordinance for the *WWTP Improvements Project*, all voted yes.

Council discussed raising water rates.

Councilman Seufer said he would like to have input from Councilman Jordan since he is over the water department.

Mayor Ford said Council could discuss the water increase at the next meeting.

Mayor Ford said Jeff Beaver was not present to address Council.

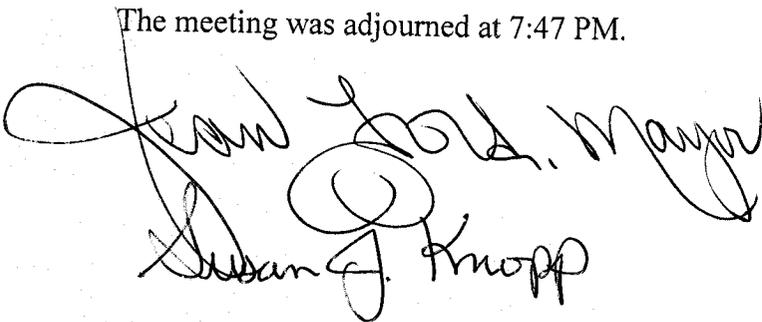
Mayor Ford said the Discovery Channels Dirty Jobs show will feature Fenton Glass on November 10<sup>th</sup> at 9:00 PM.

Councilwoman Lewis said the Planning Commission will meet on November 12<sup>th</sup> on a request by Jeff and Jason Martin. She said they will also continue discussing 8A.

Councilwoman Lewis said there will be an engineering meeting on Thursday, 5:00 PM for the sidewalk project.

Mayor Ford said the Board of Zoning Appeals will meet on December 2<sup>nd</sup> for a variance request.

The meeting was adjourned at 7:47 PM.



Handwritten signatures of Jean Ford, Mayor, and Susan J. Knopp.

WILLIAMSTOWN CITY COUNCIL  
PUBLIC HEARING  
NOVEMBER 3, 2009

The Williamstown City Council held a public hearing on Tuesday, November 3, 2009, at 7:00 PM. Those in attendance were Mayor Jean Ford, Councilpersons Marty Seufer, Ron Erb and Barbara Lewis, City Clerk/Treasurer Susan Knopp, and Atty. Bill Bragg of Goodwin and Goodwin who is serving as the City's Bond Counsel.

The purpose of the public hearing is for any persons interested to appear before Council and present protests and objections to the passage of the ordinance and the issuance of sewer revenue bonds to finance improvements to the City's wastewater treatment plant.

Bill Bragg discussed the declining rate bonds and how the project was to be financed with SRF and ARRA funds.

There was no one from the public in attendance.

Councilman Seufer asked if the market was favorable for refinancing the City's current bonds.

Mr. Bragg said he would be glad to take a look at this for the City. He said the bond closing would take place on December 17<sup>th</sup>. He added that he would have a supplemental resolution for Council at their December meeting.

The public hearing adjourned at 7:12 PM.


WILLIAMSTOWN CITY COUNCIL  
REGULAR MEETING  
DECEMBER 1, 2009

The Williamstown City Council met in regular session on Tuesday, December 1, 2009, at 7:30 PM. Those in attendance were Mayor Jean Ford, Councilpersons Marty Seufer, Paul Jordan, Ron Erb and Barbara Lewis, City Attorney Blaine Myers, and City Clerk/Treasurer Susan Knopp.

Mayor Ford called the meeting to order and Sgt. at Arms David Richards led Council in the Pledge of Allegiance.

On a motion by Jordan and second by Lewis to approve and dispense with the reading of the minutes of the previous meeting, all voted yes.

On a motion by Erb and second by Lewis to approve the current bills for payment, all voted yes.

Mayor Ford opened the public hearing for the water rate increase at 7:32 PM.

Mary Lee Neal, 415 Edgelawn Ave., asked what effect the water increase had on the sewer rates.

Clerk Knopp stated the sewer is based on water usage, but the sewer rates are not affected by a water rate increase.

There were no further public comments and the public hearing was adjourned at 7:35 PM.

Atty. Myers presented an *Ordinance Increasing the Water Rates for the City of Williamstown*.

Councilman Seufer said he wanted to explain his position on the water rate increase. He said Council was presented with a 3%, 4% and 5% increase. He said he believed the City needed the 4%, but could live without 5%. Regardless, the City needs an increase so he would not vote against an increase tonight.

On a motion by Jordan and second by Lewis to approve the second reading of an ordinance raising water rates 5%, all voted yes.

Mayor Ford stated the City needed to approve three resolutions in connection with the wastewater treatment plant improvements project.

Councilman Seufer questioned why Series 2009 B was not included in the Sweep Resolution.

Mayor Ford said the City's Bond Counsel Bill Bragg had left his cell phone number in case Council had any questions.

Councilman Seufer talked with Mr. Bragg by phone who said the Resolution was done the way the Municipal Bond Commission wanted it.

On a motion by Seufer and second by Jordan to approve a Supplemental Resolution for the Series 2009 A (West Virginia SRF Program) and Series 2009 B (ARRA Program) Sewer Revenue Bonds, all voted yes.

On a motion by Seufer and second by Jordan to approve a Sweep Resolution which will allow for electronic transfer of the monthly debt service and/or reserve fund payments on bonds made to the Municipal Bond Commission, all voted yes.

On a motion by Jordan and second by Erb to approve a Resolution of the City of Williamstown Approving Invoices Relating to the Wastewater Treatment Plant Improvements Project and Authorizing Payment, Drawdown No.1 for the period April 17, 2007 to November 30, 2009, all voted yes.

Councilman Seufer asked to have Series 2009 B added to the list for City purposes so the City would have an accurate list.

Mayor Ford announced the Annual Christmas Tree Lighting Ceremony would be held Thursday, December 3<sup>rd</sup>, at 6:30 PM. She said the WHS Band and Choir and the WCCS Choir would be performing.

Mayor Ford asked to cancel the next regular council meeting unless an emergency situation comes along.

Mayor Ford said there will be a live drive through nativity in Tomlinson Park on December 11<sup>th</sup> and 12<sup>th</sup> from 6:30 to 8:30 PM. This is being sponsored by area churches.

Councilwoman Lewis said season pool passes are now on sale for the 2010 season to give as Christmas gifts.

Councilwoman Lewis said the Planning Commission will meet this month to work on 8A.

Councilman Jordan said there is a tree in the alley behind 425 Williams Ave. that is dead and needs removed. There was a question about whose property it is on, but Jordan said he would like to avoid paying for a survey and just take the tree down.

After some discussion, Councilman Jordan said if there is no problem, he would just have the tree removed.

Mary Lee Neal asked when construction on the wastewater treatment project would begin.

Mayor Ford said there is a preconstruction meeting on January 5<sup>th</sup>.

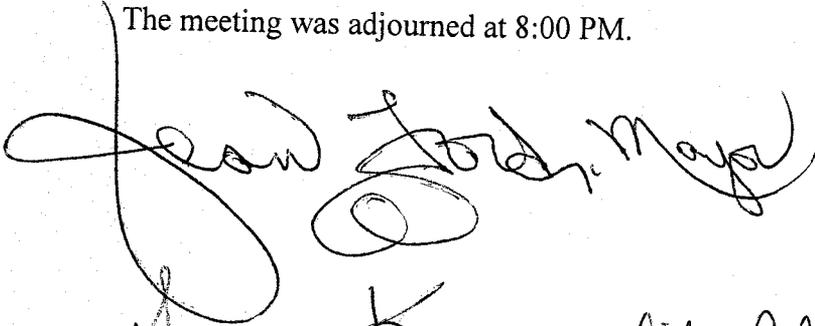
Mary Lee Neal said if the tree in question was partially on the resident's property, they could pay for half the cost of removal.

Councilman Seufer said he believed the tree was on City property and didn't believe it was worth paying to have it surveyed.

Mayor Ford said she received a letter from Wood County asking to put signage at City entrances stating this is a "Certified Arts Community".

Councilman Seufer stated the Mid Ohio Valley has been designated as a Certified Arts Community and if the City puts up these signs it is possible it could help get grants or other funding for certain projects. He said the City could contact the County Commission and ask them to order signs for Williamstown.

The meeting was adjourned at 8:00 PM.

A handwritten signature in cursive script, appearing to read "Joan Gold, Mayor". The signature is written in dark ink and is positioned above the name of the City Clerk.

Susan Knopp, City Clerk



ABSTRACT OF ORDINANCE AND  
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 8, Article 16 and Chapter 22C, Article 2, as amended, you are hereby notified that a public hearing before the City Council (the "Council") of the City of Williamstown (the "City") will be held at 7:00 pm on the 3rd day of November, 2009, at which public hearing the Council will consider for final adoption an Ordinance entitled:

ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OR IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF WILLIAMSTOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$1,750,000 IN AGGREGATE PRINCIPAL AMOUNT OF ITS SEWER REVENUE BONDS, SERIES 2009; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNER OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A BOND PURCHASE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS; AND ENACTING OTHER PROVISIONS RELATING THERETO.

The Ordinance was read and approved by the Council on first reading on October 20, 2009, and will be read and considered on second reading on November 3, 2009. The Ordinance would authorize the issuance of the City's Sewer Revenue Bonds, Series 2009 (the "Bonds") in aggregate principal amounts not to exceed \$1,750,000. 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 8, Article 16 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 interests of the City to sell the Bonds to the West Virginia Water Development Authority, for the benefit of the West Virginia Division of Environmental Protection, at interest rates not to exceed 1%. The Bonds shall mature not more than 40 years from their date of issuance.
5. The Ordinance provides that the Mayor shall execute the Bonds in the name of the City, and the seal of the City shall be affixed thereto or imprinted thereon and attested by the Recorder.
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 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 Bonds.
8. The Ordinance provides for the investment of the proceeds of the Bonds and includes covenants designed to maintain the Bonds' tax-exempt status.
9. 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, 100 W. 5th Street, Williamstown, West Virginia, on the 3rd day of November, 2009, at 7:00 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 21st day of October, 2009.

CITY OF WILLIAMSTOWN, WOOD COUNTY,  
WEST VIRGINIA

.....MARY J BUCK.....

Being first duly sworn, says that the

... "ABSTRACT OF ORDINANCE AND NOTICE OF PUBLIC HEARING" .....

Hereto attached was printed in the

..XX.. The Parkersburg News and Sentinel,

.....The Marietta AM,

A daily newspaper published in the City of Parkersburg,

Wood County, West Virginia, for ...TWO.... successive

Week(s), the first publication and posting thereon being on

the ...24TH... day of ...OCOTBER..... 2009..., and

subsequent publication on the .....31ST.....

day (s) of ...OCTOBER..... 2009....

Printer's Fee \$...259.35...

Notarized Signature \$.....2.00...

Additional Copy Fee \$.....

Total Due: \$.....261.35...

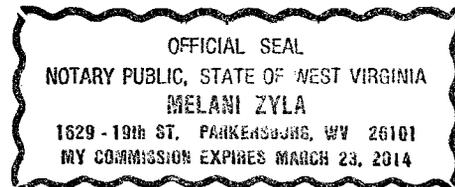
By: *Mary J Buck*

Subscribed and sworn to before me this

*2nd* day of *November* 20*09*.

*Melani Zyla*  
Notary Public for Wood County, West Virginia

My commission expires .....*3-23-14*.....





LAW OFFICES

**GOODWIN & GOODWIN, LLP**

300 SUMMERS STREET, SUITE 1500  
CHARLESTON, WEST VIRGINIA 25301-1678

P. O. Box 2107  
CHARLESTON, WEST VIRGINIA 25328-2107

TELEPHONE (304) 346-7000  
TELECOPIER (304) 344-9692

[www.goodwingoodwin.com](http://www.goodwingoodwin.com)

**COPY**

201 THIRD STREET  
PARKERSBURG, WEST VIRGINIA 26101  
(304) 485-2345

P.O. Box 349  
500 CHURCH STREET  
RIPLEY, WEST VIRGINIA 25271  
(304) 372-2651

December 8, 2009

Ms. Sara Boardman, Executive Director  
West Virginia Municipal Bond Commission  
1207 Quarrier Street, Suite 401  
Charleston, WV 25301

Re: City of Williamstown  
Sewer Revenue Bonds  
Series 2009 A (West Virginia SRF Program) and  
Series 2009 B (ARRA Program)

Dear Sara:

Enclosed please find a revised New Issue Report Form for the above-referenced transaction. Lender's counsel requested that the amount of the administrative fee be excluded from the 1<sup>st</sup> Debt Service Amount. The amount has been revised accordingly and the report re-filed for your use.

Sincerely yours,



William K. Bragg, Jr.

WKB/aks  
Enclosure

WV MUNICIPAL BOND COMMISSION  
1207 Quarrier Street, Suite 401  
Charleston, WV 25301  
(304) 558-3971

NEW ISSUE REPORT FORM  
Date of Report: December 8, 2009

ISSUE: City of Williamstown, Sewer Revenue Bonds, Series 2009 A  
(West Virginia SRF Program) and Series 2009 B (ARRA Program)  
ADDRESS: 100 W. 5th Street  
Williamstown, WV 26187 COUNTY: Wood  
PURPOSE OF ISSUE: New Money X  
ISSUE DATE: December 9, 2009 CLOSING DATE: December 9, 2009  
ISSUE AMOUNTS: \$800,000 and \$660,000  
RATES: 0% interest rate and 1% administrative fee on Series 2009 A Bond  
-3% interest rate on Series 2009 B Bond  
1ST DEBT SERVICE DUE: September 1, 2011 1ST PRINCIPAL DUE: September 1, 2011  
1ST DEBT SERVICE AMT.: \$5,195.00 PAYING AGENT: Municipal Bond Comm.

BOND COUNSEL: Goodwin & Goodwin, LLP LENDER: West Virginia Department of  
Contact Person: W.K. Bragg, Jr. Environmental Protection  
Phone 346-7000 Contact Person: Rosalie Brodersen  
Phone: (304) 926-0496 Ext. 1608

KNOWLEDGEABLE ISSUER CONTACT:  
Contact Person: Susan Knopp  
Position: City Clerk  
Phone: (304) 375-6128

-----DEPOSITS TO MBC AT CLOSE-----  
By      Accrued Interest: \$     0  
     Capitalized Interest: \$     0  
By      Wire      Reserve Account: \$     0  
     Check      Other: \$     0

-----REFUNDS & TRANSFERS BY MBC AT CLOSE-----  
By      To Escrow Trustee: \$     N/A  
     Wire      To Issuer: \$     N/A  
     Check      To Cons. Invest. Fund: \$     N/A  
     IGT      Other: \$                     

Notes: \_\_\_\_\_  
FOR MUNICIPAL BOND COMMISSION USE ONLY:  
DOCUMENTS  
REQUIRED: \_\_\_\_\_  
TRANSFERS  
REQUIRED: \_\_\_\_\_



CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS  
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM)  
AND  
SERIES 2009 B (ARRA PROGRAM)

ACCEPTANCE OF APPOINTMENT OF DEPOSITORY BANK

Williamstown Bank, Inc., at its office located in Williamstown, Wood County, West Virginia, hereby accepts appointment as Depository Bank in connection with an Ordinance of City of Williamstown (the "City") duly enacted by the City Council of the City (the "Council") on November 3, 2009, and supplemented by a Supplemental Resolution adopted by the Council of the City on December 1, 2009 (collectively, the "Ordinance"), authorizing issuance of City of Williamstown, Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Series 2009 B (ARRA Program), dated December 9, 2009, in the principal amounts of \$800,000 and \$660,000, and agrees to perform all duties of Depository Bank as set forth in the Ordinance.

Witness my signature as of the 9<sup>th</sup> day of December, 2009.

WILLIAMSTOWN BANK, INC.

By:   
President & CEO



CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS  
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM)  
AND  
SERIES 2009 B (ARRA PROGRAM)

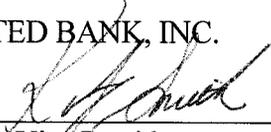
ACCEPTANCE OF APPOINTMENT OF REGISTRAR

United Bank, Inc, at its office located in Charleston, Kanawha County, West Virginia, hereby accepts appointment as Registrar in connection with an Ordinance of City of Williamstown (the "City") duly enacted by the City Council of the City (the "Council") on November 3, 2009, and supplemented by a Supplemental Resolution adopted by the Issuer on December 1, 2009 (collectively, the "Ordinance"), authorizing the issuance of City of Williamstown, Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Series 2009 B (ARRA Program), dated December 17, 2009, in the principal amount of \$800,000 and \$660,000, and agrees to perform all duties of Registrar as set forth in the Ordinance.

Witness my signature as of the 9<sup>th</sup> day of December, 2009.

UNITED BANK, INC.

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

  
Vice President



CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS  
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM)  
AND  
SERIES 2009 B (ARRA PROGRAM)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 9<sup>th</sup> day of December, 2009, by and between CITY OF WILLIAMSTOWN, a municipality, public corporation and political subdivision duly created under the laws of the State of West Virginia (the "Issuer"), and UNITEDBANK, INC., at its office located in Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$800,000 and \$660,000 aggregate principal amounts of Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Series 2009 B (ARRA Program) in fully registered forms (collectively, the "Bonds") pursuant to a Bond Ordinance enacted by the Issuer on November 3, 2009, as amended by a Supplemental Resolution adopted by the Issuer on December 1, 2009 (collectively, the "Ordinance");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Ordinance, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Ordinance provides for the appointment by the Issuer of a Registrar for the Bond; 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 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 Bond from federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen

signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation heretofore agreed by the parties and set forth in the attached invoice.

5. It is intended that this Registrar's Agreement shall carry out and implement 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:

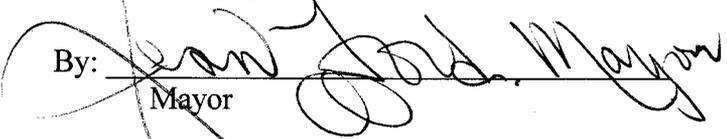
ISSUER:                      City of Williamstown  
                                    Attention: City Clerk  
                                    100 W. 5<sup>th</sup> Street  
                                    Williamstown, WV 26187

REGISTRAR:                United Bank, Inc.  
                                    Attention: Kathy Smith  
                                    500 Virginia Street, East  
                                    Charleston, WV 25301

8. The Registrar is hereby requested and authorized to register, authenticate and deliver the Bonds in accordance with the Ordinance and instructions provided by the Issuer.

IN WITNESS WHEREOF, CITY OF WILLIAMSTOWN and UNITED BANK, INC. 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.

CITY OF WILLIAMSTOWN

By:   
Mayor

UNITED BANK, INC.

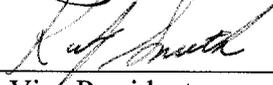
By:   
Vice President

Exhibit A

(Bond Ordinance)



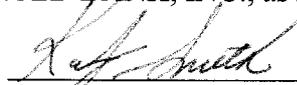
CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS  
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM)  
AND  
SERIES 2009 B (ARRA PROGRAM)

CERTIFICATE OF REGISTRATION

I, Kathy Smith, as Vice President, of United Bank, Inc., as Registrar (the "Registrar"), under a Registrar's Agreement between the Registrar and the City of Williamstown (the "City") dated as of the date hereof, hereby certify that on the 9<sup>th</sup> day of December, 2009, the Bonds of the City in the principal amount of \$800,000, designated "City of Williamstown, Sewer Revenue Bond, Series 2009 A (West Virginia SRF Program)", numbered AR-1, and dated as of the date hereof, and in the principal amount of \$660,000, designated "City of Williamstown, Sewer Revenue Bond, Series 2009 B (ARRA Program)", numbered BR-1, and dated as of the date hereof, were registered as to principal only in the name of "The West Virginia Water Development Authority", 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 9<sup>th</sup> day of December, 2009.

UNITED BANK, INC., as Registrar

By: 

\_\_\_\_\_  
Vice President



THE CITY OF WILLIAMSTOWN, WEST VIRGINIA

Sewerage System Revenue Bonds.  
Series 1987 A and Series 1987 B

SUPPLEMENTAL AND AMENDATORY BOND ORDINANCE

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AN ORDINANCE SUPPLEMENTING AND AMENDING THE ORDINANCE OF THE CITY OF WILLIAMSTOWN ENTITLED:

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE WATER AND SEWER REVENUE REFUNDING AND IMPROVEMENT BONDS, SERIES 1955, OF THE CITY OF WILLIAMSTOWN, WEST VIRGINIA THROUGH THE ISSUANCE BY THE CITY OF WILLIAMSTOWN, WEST VIRGINIA OF WATERWORKS REFUNDING REVENUE BONDS, SERIES 1987, IN AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$59,000 AND SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1987 IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$59,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH WATERWORKS REVENUE BONDS AND SEWERAGE SYSTEM REVENUE BONDS; PROVIDING FOR THE SEVERING OF THE COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF WILLIAMSTOWN INTO A SEPARATE WATERWORKS SYSTEM OF THE CITY OF WILLIAMSTOWN AND A SEPARATE SEWERAGE SYSTEM OF THE CITY OF WILLIAMSTOWN; CONTINUING THE SANITARY BOARD AND ENACTING OTHER PROVISION RELATING THERETO:

AUTHORIZING THE CONSTRUCTION AND ACQUISITION OF CERTAIN PUBLIC SERVICE PROPERTIES FOR THE COLLECTION, TREATMENT, PURIFICATION AND DISPOSAL OF LIQUID OR SOLID WASTES, SEWAGE AND INDUSTRIAL WASTES IN THE CITY OF WILLIAMSTOWN, WOOD COUNTY, WEST VIRGINIA, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREFOR, THROUGH THE ISSUANCE BY THE CITY OF WILLIAMSTOWN OF SEWERAGE SYSTEM REVENUE BONDS, SERIES 1987 A AND SERIES 1987 B IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$900,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF SUCH SEWERAGE SYSTEM REVENUE BONDS; AUTHORIZING THE SALE OF SUCH SEWERAGE SYSTEM REVENUE BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; APPROVING AND RATIFYING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO SUCH BONDS; ADOPTING OTHER PROVISIONS RELATING THERETO; AND REPEALING AN ORDINANCE OF THE CITY ADOPTED ON APRIL 14, 1987

The Council of the City of Williamstown hereby ordains:

ARTICLE I

DEFINITIONS, STATUTORY AUTHORITY AND FINDINGS

Section 1.01. Definitions. All capitalized terms used in this Supplemental and Amendatory Ordinance shall have the meanings set forth in the Prior Ordinance, and in addition,

the following terms shall have the meanings specified below with respect to the Series 1987 A Bonds and the Series 1987 B Bond, notwithstanding the fact that such terms may have different meanings under the Prior Ordinance:

"Authority" means the West Virginia Water Development Authority 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 City, as hereinafter defined, or any other officer of the City of Williamstown specifically designated by resolution of the City, as hereinafter defined, as such.

"Bond 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.

"Bonds" means collectively, the Prior Bonds, Series 1987 A Bonds and Series 1987 B Bond, as hereinafter defined, and any additional Bonds hereafter issued within the terms, restrictions and conditions contained herein and in the Prior Ordinance.

"Bonds Capitalized Interest Account" means the Sewerage System Revenue Bonds Capitalized Interest Account established in the Bond Construction Trust Fund.

"Bond Construction Trust Fund" means the City of Williamstown Project Bond Construction Trust Fund established by Section 4.02 hereof.

"Consulting Engineers" means any qualified engineers or firm of engineers that at any time may be retained by the City as consulting engineers for the System.

"Cost of the Project" or similar phrases mean those costs described in Section 1.03 hereof to be part of the costs of construction and acquisition of the Project, as hereinafter defined.

"Depository Bank" means any one or more state banking corporations or national banking associations, eligible under the laws of the State to receive deposits of state and municipal funds, insured by the Federal Deposit Insurance Corporation, and designated by the Sanitary Board of the City as custodian of any one or more of the funds established by Article IV hereof.

"EPA" means the United States Environmental Protection Agency and any successor to the functions of the EPA.

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

"Government Obligations" means (i) direct obligations of the United States of America, (ii) obligations unconditionally guaranteed by the United States of America, and (iii) securities which represent an interest in direct obligations of the United States of America (including obligations to pay principal or interest) in an amount sufficient to pay when due the face amount of such securities and interest thereon.

"Grant" means an amount expected to be received by the City from the EPA, in aid of financing a certain portion of the Cost of the Project.

"Gross Revenues" means the Sewerage System Gross Revenues as that term is defined in the Prior Ordinance.

"Loan Agreement" means the loan agreement between the City and the Authority, pursuant to which the Authority has agreed to purchase the Series 1987 A Bonds as hereinafter defined.

"Net Revenues" means the Gross Revenues of the System less Operating Expenses of the System.

"Operating Expenses" means the Sewerage System Operating Expenses as that term is defined in the Prior Ordinance.

"Paying Agent" means the paying agent or co-paying agent for the Bonds appointed by Supplemental Resolution hereto.

"Plans and Specifications" means the plans and specifications for the construction of the Project prepared by the Consulting Engineers on file in the office of the City.

"Prior Bonds" means the Series 1987 Sewerage System Refunding Revenue Bonds issued by the City pursuant to the Prior Ordinance.

"Prior Ordinance" means the Ordinance enacted by the City on April 7, 1987, authorizing the issuance of the Series 1987 Sewerage System Refunding Revenue Bonds.

"Program" means the Authority's loan program, under which the Authority purchases the water development revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of water development revenue bonds of the Authority.

"Project" means the public service properties for the collection, treatment, purification and disposal of liquid or solid wastes, sewage or industrial wastes of the City under the supervision and control of a sanitary board, as described in Exhibit A attached hereto and incorporated herein by reference.

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

A. Government Obligations;

B. 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; the Federal National Mortgage Association (but only to the extent such obligations are guaranteed by the Government National Mortgage Association); or the Government National Mortgage Association;

C. Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; temporary notes, preliminary loan notes or project notes issued by public agencies or municipalities, in each case fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

D. Certificates of deposit or other similar banking arrangements permitted by law, with a member bank or member banks of the Federal Reserve System or banks the deposits of which are insured by the FDIC, upon the terms and conditions as follows:

(i) all moneys invested in each such interest-bearing time deposit, certificate of deposit or similar banking arrangement shall be continuously and fully secured by obligations of the types described in clauses A, B and C above of a market value equal at all times to the amount of the deposit, certificate or similar banking arrangement; and

(ii) each such interest-bearing time deposit, certificate of deposit or similar banking arrangement shall permit the moneys so placed to be available for use at the times provided with respect to the investment or reinvestment of such moneys;

E. Direct and general obligations of the State or any other state within the territorial United States, to the payment of the principal of and interest on which the full faith and credit of such state is pledged; provided, that, at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond rating agency;

F. The "consolidated fund" (or any distinct portion thereof) managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6 of the Code of West Virginia, 1931, as amended;

G. Repurchase agreements relating to any securities of the type described in clauses A or C above with any banking institution or association, including the Depository Bank, or any other financial institution, provided that the Depository Bank or the Bond Commission, as the case may be, or its agent have possession of the collateral, and that such collateral be free of claims of third parties.

"Sanitary Board" means the Sanitary Board of the City, as such term is defined in the Prior Ordinance.

"Series 1987 A Bonds" means the Series 1987 A Bonds of the City described in Sections 3.02 and 3.03 hereof.

"Series 1987 A Bonds Reserve Account" means The City of Williamstown Sewerage System Bond Reserve Account created in the Series 1987 A Sinking Fund by Section 4.01B hereof.

"Series 1987 A Bonds Reserve Account Requirement" means the maximum amount of principal and interest which will come due on the Series 1987 A Bonds in the then current or any succeeding Fiscal Year.

"Series 1987 A Sinking Fund" means The City of Williamstown Sewerage System Series 1987 A Bonds Sinking Fund created in the Sewerage System Sinking Fund by Section 4.01B hereof.

"Series 1987 B Bond" means the Series 1987 B Bond of the City described in Sections 3.02 and 3.03 hereof.

"Series 1987 B Bond Reserve Account" means The City of Williamstown Sewerage System 1987 B Bond Reserve Account created in the Series 1987 B Sinking Fund by Section 4.01E hereof.

"Series 1987 B Bond Reserve Account Requirement" means the maximum amount of principal which will come due on the Series 1987 B Bond in the then current or any succeeding Fiscal Year.

"Series 1987 B Sinking Fund" means The City of Williamstown Sewerage System Series 1987 B Bond Sinking Fund created in the Sewerage System Sinking Fund by Section 4.01E hereof.

"Sewer Act" means Chapter 16, Article 13 of the Code of West Virginia of 1931, as amended, and in effect on the date of enactment of this Supplemental and Amendatory Ordinance.

"Sewerage System Depreciation Fund" means the City of Williamstown Sewerage System Depreciation Fund created by Section 3.01 of the Prior Ordinance and Section 4.01C hereof.

"State" means the State of West Virginia.

"Supplemental Loan Agreement" means the supplemental loan agreement between the City and the Authority, pursuant to which the Authority has agreed to purchase the Series 1987 B Bond.

"Supplemental Resolution" means any resolution of the City amending or supplementing this Supplemental and Amendatory Ordinance.

"System" means the Project, in its entirety or any integral part thereof, and any improvements, extensions or betterments thereto hereafter constructed or acquired for the public services properties from any sources whatsoever, both within and without the City.

"Water Development Act" means Chapter 20, Article 5C, of the Code of West Virginia of 1931, as amended, and in effect on the date of adoption of this Supplemental and Amendatory Ordinance.

Additional terms and phrases are defined in this Supplemental and Amendatory Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with generally accepted accounting principles.

Words importing singular number include the plural number in each case and vice versa; words importing the masculine gender include every other gender; and words importing persons include firms, partnerships, associations and corporations.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Supplemental and Amendatory Ordinance; and the term "hereafter" means after the date of adoption of this Supplemental and Amendatory Ordinance.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Supplemental and Amendatory Ordinance so numbered.

Section 1.02. Authority for this Supplemental and Amendatory Ordinance. This Supplemental and Amendatory Ordinance is adopted pursuant to the provisions of the Sewer Act, the Prior Ordinance, and other applicable provisions of law.

Section 1.03. Findings. The Council hereby finds and determines as follows:

A. The City of Williamstown is a municipal corporation and political subdivision of the State of West Virginia situated in Wood County of the State. The City of Williamstown owns and operates a municipal sewerage system and has heretofore financed the acquisition and construction of the System and certain additions, extensions and improvements to the System by issuance of several series of revenue bonds and refunding bonds, of which there is presently outstanding the City's Water and Sewer Revenue Refunding and Improvement Bonds, Series 1955, dated December 1, 1955 upon original issuance and issued in aggregate principal amount of \$320,000.00 pursuant to an Ordinance enacted by the Council of the City on October 18, 1955, which is to be refunded upon the issuance of the Prior Bonds and the Waterworks Refunding Revenue Bonds Series 1987 as authorized by the Prior Ordinance, to be issued concurrently with the Series 1987 A Bonds and Series 1987 B Bond.

B. The present sewage treatment facility of the City is inadequate and the existing sewage treatment plant cannot meet State and Federal regulatory requirements for secondary sewage treatment.

C. It is deemed necessary and desirable for the health, welfare and safety of the inhabitants of the City that the Project be constructed at an estimated cost of \$2,708,295. The Cost of the Project shall be deemed to include the construction of a secondary sewer treatment plant and the necessary appurtenances thereto to augment the City's present primary treatment capacity at Williamstown, Wood County, West Virginia. Expenses incurred will include, but not be limited to, the cost of all property, rights, easements and franchises deemed necessary or convenient therefor and for the

improvements determined upon as provided in the Sewer Act, interest upon the Series 1987 A Bonds prior to and during construction or acquisitions and six months after the completion of construction or acquisition of the Project, costs and expenses of the Authority related and incidental to the Project and the issuance of the Series 1987 A Bonds and the Series 1987 B Bond, engineering and legal expenses, expenses for estimates of costs and of revenues, expenses for plan specifications and surveys, expenses necessary or incident to determining the feasibility or practicability of the Project, administrative expenses and other obligations necessary to implement the Project; and such other expenses as may be necessary or incident to the financing authorized by this Supplemental and Amendatory Ordinance and the Sewer Act, the construction and acquisition of the Project and the placing of the same in operation and the performance of the things herein required or permitted in connection with any thereof, including with respect to the Series 1987 A Bonds and Series 1987 B Bond, any commitment fees to the Authority; provided, that reimbursement to the City for any amounts expended by it for allowable costs of the Project prior to the issuance of the Series 1987 A Bonds and Series 1987 B Bond, as the case may be, or the repayment of indebtedness incurred by the City for such purposes shall be deemed a Cost of the Project.

D. The City has received certain grants for the construction and acquisition of the Project, including a grant from the EPA in the approximate amount of \$1,863,538. The District has entered into a Step II/III grant agreement with the EPA, pursuant to which the EPA will reimburse the City for approximately seventy-five percent (75%) of the Cost of the Project incurred by the City which is eligible for reimbursement by EPA.

E. Other than the Prior Bonds described herein, the City does not have any bonds or other obligations outstanding or to be outstanding as of the date hereof which have a lien on the Net Revenues derived from the operation of the System.

The estimated Gross Revenues to be derived from the operation of the System in each year after the construction of the Project will be sufficient to pay all Operating Expenses and to pay the principal of and interest on the Bonds and all Sinking Fund, Reserve Account, Sewerage System Depreciation Fund and other payments provided for in the Prior Ordinance and this Supplemental and Amendatory Ordinance with respect to the Bonds.

F. The Authority has agreed to purchase the Series 1987 A Bonds and Series 1987 B Bond pursuant to the terms and provisions of the Loan Agreement and the Supplemental Loan Agreement.

G. It is in the best interests of the City that its Series 1987 A Bonds and Series 1987 B Bond be sold to the Authority pursuant to the Loan Agreement and the Supplemental Loan Agreement as soon after the adoption of this Supplemental and Amendatory Ordinance as may be practicable and authorized and permitted by applicable law.

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

I. The City has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Series 1987 A Bonds and Series 1987 B Bond, or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired.

Section 1.04. Supplemental and Amendatory Ordinance Constitutes Contract. In consideration of the acceptance of the Series 1987 A Bonds and Series 1987 B Bond by those who shall be the registered owners of the same from time to time, this Supplemental and Amendatory Ordinance shall be deemed to be and shall constitute a contract between the City and such holders of the Series 1987 A Bonds and Series 1987 B Bond, and the covenants and agreements herein set forth to be performed by the City shall be for the equal benefit, protection and security of the registered owners of any and all of such Series 1987 A Bonds and Series 1987 B Bond, 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.

## ARTICLE II

### AUTHORIZATION OF THE PROJECT; APPROVAL OF ACTIONS: APPROVAL AND EXECUTION OF DOCUMENTS

Section 2.01. Authorization of the Project. There is hereby authorized the construction and acquisition of the Project described in Exhibit A hereto.

Section 2.02. Approval of Application, Loan Agreement, Amended Application, and Supplemental Loan Agreement. The application for a construction loan to the Authority executed by an Authorized Officer of the City on February 2, 1987; the Loan Agreement, the amended application for a construction loan to the Authority, executed by an Authorized Officer of the City on February 2, 1987, and the Supplemental Loan Agreement are hereby approved. An Authorized Officer of the City and the City Clerk of the City are hereby authorized to execute the Loan Agreement and the Supplemental Agreement, and all other documents required to be executed by or on behalf of the City by the terms of the Loan Agreement or the Supplemental Loan Agreement. All stipulations, covenants and agreements contained in the Loan Agreement and the Supplemental Loan Agreement are incorporated herein and made a part hereof as fully as if herein set out in full.

Section 2.03. Approval of Actions. An Authorized Officer and the City Clerk of the City and the other officers of the City hereby are authorized and directed to execute any and all instruments and perform any and all acts as, in their discretion, may be necessary or advisable in effecting the purposes of this Supplemental and Amendatory Ordinance, the Loan Agreement, or the Supplemental Loan Agreement.

### ARTICLE III

#### BONDS

Section 3.01. Authorization of Series 1987 A Bond and Series 1987 B Bond. For the purposes of capitalizing interest on the Series 1987 A Bonds paying the Cost of the Project not otherwise provided for, funding the Series 1987 A Bonds Reserve Account and Series 1987 B Bond Reserve Account, and paying certain costs of issuance and related costs, there shall be issued negotiable bonds of the City, in an aggregate principal amount not to exceed \$900,000. The bonds shall be designated "Series 1987 A Bond" in the aggregate principal amount of not more than \$900,000 and "Series 1987 B Bond" in the aggregate principal amount of not more than \$900,000, and shall have such terms as set forth hereinafter, or in a Supplemental Resolution. The proceeds of the Series 1987 A Bonds and Series 1987 B Bond remaining, if any, after funding of the respective reserve accounts and capitalization of interest shall be deposited in the Bond Construction Trust Fund established by Section 4.02 hereof.

Section 3.02. Terms of the Series 1987 A Bond and Series 1987 B Bond. The Series 1987 A Bonds and Series 1987 B Bond shall bear interest, if any, at such rate or rates not exceeding the then legal maximum, payable semiannually on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the City shall prescribe in a Supplemental Resolution. The Series 1987 A Bonds shall be numbered consecutively upward beginning with Number 1. The Series 1987 A Bonds and Series 1987 B Bond shall be payable as to principal at the office of the Bond Commission, as Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 1987 A Bonds and Series 1987 B Bond 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 Registrar, or by such other method as shall be mutually agreeable as long as the Authority is the holder thereof.

Section 3.03. Form of the Series 1987 A Bond and Series 1987 B Bond. The Series 1987 A Bonds shall be issued in substantially the form set forth as Exhibit B hereto, with such appropriate corrections, omissions and insertions as are permitted or required by this Supplemental and Amendatory Ordinance or any Supplemental Resolution and are deemed advisable by the City.

The Series 1987 B Bond shall be issued in substantially the form set forth as Exhibit C hereto, with such appropriate corrections, omissions and insertions as are permitted or required by this Supplemental and Amendatory Ordinance or any Supplemental Resolution and are deemed advisable by the City.

Section 3.04. Execution of Bonds. The Series 1987 A Bonds and Series 1987 B Bond shall be executed in the name of the City by the manual signature of an Authorized Officer thereof, and the seal of the City shall be affixed thereto or imprinted thereon and attested by the City Clerk by manual signature. In case any one or more of the persons who shall have signed or sealed any Series 1987 A Bonds and Series 1987 B Bond shall cease to hold such office before such Series 1987 A Bonds and Series 1987 B Bond so signed and sealed shall have been delivered, such Series 1987 A Bonds and Series 1987 B Bond nevertheless may be delivered as herein provided and may be issued as if such person had not ceased to hold such office. Any Series 1987 A Bonds and Series 1987 B Bond may be signed, sealed and attested on behalf of the City by such person who at the time of such actions shall hold the requisite office, regardless of whether such person shall have held such office on the date of such Series 1987 A Bonds and Series 1987 B Bond.

Section 3.05. Authentication and Registration. No Series 1987 A Bond and Series 1987 B Bond shall be valid or obligatory for any purpose or entitled to any security or benefit hereof unless and until the Certificate of Authentication on such Series 1987 A Bond and Series 1987 B Bond shall have been duly executed by the Registrar. Any Certificate of Authentication upon any Series 1987 A Bond and Series 1987 B Bond so executed shall be conclusive evidence that such Series 1987 A Bond and Series 1987 B Bond has been authenticated, registered and delivered under this Supplemental and Amendatory Ordinance. The Certificate of Authentication on any Series 1987 A Bond and Series 1987 B Bond shall be deemed to have been executed by the Registrar if signed by the manual signature of an authorized officer of the Registrar. It shall not be necessary that the same authorized officer sign the Certificate of Authentication on each Series 1987 A Bond and Series 1987 B Bond.

Section 3.06. Negotiability and Registration. Subject to the requirements for transfer set forth below, the Series 1987 A Bonds and Series 1987 B Bond shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive holder, in accepting each Series 1987 A Bond or Series 1987 B Bond, shall be deemed conclusively to have agreed to the incontestability of the Series 1987 A Bonds and Series 1987 B Bond in the hands of a bona fide holder for value, subject to compliance by such holder with the registration provisions herein and therein provided.

As long as any of the Series 1987 A Bonds and Series 1987 B Bond remain outstanding, the Registrar shall keep and maintain the Register for the registration and transfer of any Series 1987 A Bonds and Series 1987 B Bond.

A Series 1987 A Bond or Series 1987 B Bond shall be transferable only by transfer of registration upon the Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of a Series 1987 A Bond or Series 1987 B Bond, there shall be issued another Series 1987 A Bond or Series 1987 B Bond (at the option of the transferee) of the same series, interest rate, if any, and maturity as the transferred Series 1987 A Bond or Series 1987 B Bond and of an aggregate principal amount equal to the unpaid principal amount of the transferred Series 1987 A Bond or Series 1987 B Bond.

In all cases in which the privilege of transferring or exchanging a Series 1987 A Bond or Series 1987 B Bond is exercised, a Series 1987 A Bond or Series 1987 B Bond shall be delivered in accordance with the provisions of this Supplemental and Amendatory Ordinance. Any Series 1987 A Bond or Series 1987 B Bond surrendered in any such transfer or exchange shall be cancelled forthwith by the Registrar. Any transfer of a Series 1987 A Bond or Series 1987 B Bond and any exchange of a Series 1987 A Bond or Series 1987 B Bond in the event of partial redemption shall be made by the Registrar without charge to the holder or the transferee thereof. For every transfer or exchange of a Series 1987 A Bond or Series 1987 B Bond, the Registrar may make a charge sufficient to reimburse its office for any tax or other governmental charge required to be paid with respect to such transfer or exchange. The City shall pay such service charge, tax or other governmental charge. The Registrar shall not be obliged to make any such transfer or exchange of a Series 1987 A Bond or Series 1987 B Bond proposed to be redeemed after the selection of such bonds to be redeemed.

Section 3.07. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 1987 A Bond or Series 1987 B Bond shall become mutilated or be destroyed, stolen or lost, the City may execute, and the Registrar shall authenticate, register and deliver, a new Series 1987 A Bond or Series 1987 B Bond of like series, maturity and principal amount as the Series 1987 A Bond or Series 1987 B Bond so mutilated, destroyed, stolen or lost, either in exchange for and upon surrender and cancellation of, such mutilated Series 1987 A Bond or Series 1987 B Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, but only if the holder shall furnish the City and the Registrar with proof of his ownership thereof and that the Series 1987 A Bond or Series 1987 B Bond has been destroyed, stolen or lost and shall comply with such other reasonable regulations and conditions as the City or the Registrar may stipulate. The name of the holder listed in the Register shall constitute proof of ownership. Any Series 1987 A Bond and Series 1987 B Bond so surrendered shall be submitted to and cancelled by the Registrar, and evidence of such cancellation shall be given to the City. If any such Series 1987 A Bond or Series 1987 B Bond shall have matured or be about to mature, the City, by and through the Registrar, may pay the same without issuance of a substitute Series 1987 A Bond or Series 1987 B Bond therefor.

Section 3.08. Person Treated as Owners. The City, the Registrar and any agent of the City or the Registrar may treat the person in whose name any Series 1987 A Bond or Series 1987 B Bond is registered as the owner of such Series 1987 A

Bond or Series 1987 B Bond for the purpose of receiving payment of the principal of and interest, if any, on such Series 1987 A Bond or Series 1987 B Bond, and for all other purposes, whether or not such Series 1987 A Bond or Series 1987 B Bond is overdue.

Section 3.09. Delivery of the Series 1987 A Bond and the Series 1987 B Bond. The City shall execute and deliver to the Registrar, and the Registrar shall authenticate, register and deliver to the Authority the Series 1987 A Bonds and the Series 1987 B Bond, upon payment therefor and receipt of the documents set forth below:

A. A request and authorization to the Registrar on behalf of the City, signed by an Authorized Officer, to authenticate and deliver to the Authority the Series 1987 A Bonds and the Series 1987 B Bond; and

B. The unqualified approving opinion of bond counsel designated by the City and acceptable to the Authority.

Section 3.10. Application of Proceeds of Series 1987 A Bond and Series 1987 B Bond. The proceeds received from the sale of the Series 1987 A Bonds and Series 1987 B Bond shall be used to fund the Bonds Capitalized Interest Account, Series 1987 A Bonds and Series 1987 B Bond Reserve Accounts and to repay the Authority any interim loans advanced to the City, and any remaining proceeds shall be deposited in the Bond Construction Trust Fund and applied to the payment of the Cost of the Project, including the costs of issuance of the Series 1987 A Bonds and Series 1987 B Bond, and the holders of the Series 1987 A Bonds and Series 1987 B Bond shall have a lien upon the proceeds until such proceeds are applied in the manner herein described.

#### ARTICLE IV

#### SERIES 1987 A BOND AND SERIES 1987 B BOND PROCEEDS; REVENUES; FUNDS; AND ACCOUNTS

#### Section 4.01. Revenues; Funds and Accounts.

A. The Gross Revenues from the operation of the System shall be deposited upon receipt in the Depository Bank in the Sewerage System Revenue Fund, established by the Prior Ordinance. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinance and in this

Supplemental and Amendatory Ordinance and shall be kept separate and distinct from all other funds of the Depository Bank or of the City and used solely for the purposes and in the manner provided in the Prior Ordinance and herein. All revenues on deposit in the Revenue Fund shall first each month be used to pay all reasonable Operating Expenses of the System. Thereafter, disbursements shall be made from the Revenue Fund in the order and priority set forth in Section 3.03 B of the Prior Ordinance and in Subsections B, C, D and E of this Section 4.01 and shall be used only for the purposes and in the manner therein and herein provided.

B. (1) On the first day of each month, beginning on the first day of that month which is seven months prior to the first interest payment date on which interest on the Series 1987 A Bonds is to be paid from Revenues, the City shall apportion and set apart out of the Revenue Fund and remit to the Bond Commission for deposit in a sub account within the Sewerage System Sinking Fund which sub account is hereby created and established with the Bond Commission, to be designated the "Series 1987 A Sinking Fund" a sum equal to one-sixth of the amount of interest which will become due on the Series 1987 A Bonds on the next ensuing semiannual interest payment date; provided, that "next ensuing semiannual interest payment date" shall not refer to the interest payment date on which any such deposit is made. The last monthly deposit to be made in each six-month period to pay interest on the next ensuing semiannual interest payment date may be reduced to the extent that deposits made for the five preceding months, together with any other moneys on deposit in the Series 1987 A Sinking Fund for the payment of interest would be sufficient with such reduced monthly deposit to make the next ensuing semiannual interest payment. All remittances of funds from the Revenue Fund to the Series 1987 A Sinking Fund pursuant to this Section shall be made on a parity basis with all remittances of funds to the Sewerage System Sinking Fund pursuant to Section 3.03 B(2)(a) of the Prior Ordinance and no payments required under either such Section of the Prior Ordinance or this Section shall have any preference or priority over the other.

(2) On the first day of each month, beginning on the first day of that month which is 13 months prior to the first principal payment date of the Series 1987 A Bonds, the City shall apportion and set apart out of the Revenue Fund and remit to the Bond Commission for deposit in the Series A Sinking Fund, a sum equal to one-twelfth of the amount of principal which will mature and become due on the Series 1987 A Bonds on the next ensuing principal payment date; provided, that "next ensuing principal payment date" shall not refer to the

principal payment date on which any such deposit is made. The last monthly deposit to be made in each twelve-month period to pay principal on the next ensuing annual principal payment date may be reduced to the extent that deposits made for the eleven preceding months, together with any other moneys on deposit in the Series 1987 A Sinking Fund for the payment of principal, would be sufficient with such reduced monthly deposit to make the next ensuing annual principal payment. All remittances of funds from the Revenue Fund to the Series 1987 A Sinking Fund pursuant to this Section shall be made on a parity basis with all remittances of funds to the Sewerage System Sinking Fund pursuant to Section 3.03 B(2)(b) of the Prior Ordinance and no payments required under either such Section of the Prior Ordinance or this Section shall have any preference or priority over the other. So long as there is on deposit in the Series 1987 A Bond Reserve Account an amount equal to the Series 1987 A Bond Reserve Requirement, the Bond Commission shall transfer to the City and deposit in the Revenue Fund for payment into the Series 1987 A Sinking Fund semi-annually all investment earnings on the Series 1987A Bond Reserve Account.

(3) Unless the City has funded the Series 1987 A Bonds Reserve Account with Bond proceeds, the City shall next, from the Revenue Fund, remit to the Bond Commission for deposit in an account to be designated the "Series 1987 A Bonds Reserve Account," which is hereby created and established in the Series 1987 A Sinking Fund, on the first day of each month of each year, beginning with and including the month in which the payments required by Section 4.01 B (2) are commenced, an amount equal to 1/12th of 1/10th of the Series 1987 A Bonds Reserve Account Requirement; provided that no further payments shall be made into the Series 1987 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 1987 A Bonds Reserve Account Requirement. All remittances of funds from the Revenue Fund to the Series 1987 A Sinking Fund pursuant to this Section shall be made on a parity basis with all remittances of funds to the Sewerage System Sinking Fund pursuant to Section 3.03B(2)(6) of the Prior Ordinance and no payments required under either such Section shall have any preference or priority over the other.

Moneys in the Series 1987 A Bonds Reserve Account shall be used only for the purpose of paying principal of or interest on the Series 1987 A Bonds, as the same shall come due, when other moneys in the Series 1987 A Sinking Fund are insufficient therefor, and for no other purpose.

C. On the first day of each month, beginning with the first month in which interest shall be payable from the Revenue Fund, the City shall apportion and set apart out of the Revenue Fund and transfer to the Depository Bank, for deposit in the Sewerage System Depreciation Fund, a sum equal to 2-1/2% of Gross Revenues, less any amount transferred to the Series 1987 A Bonds Reserve Account received during the previous month. All funds in the Sewerage System Depreciation Fund shall be kept separate and distinct from all other funds of the City and the Depository Bank.

Withdrawals and disbursements from the Sewerage System Depreciation Fund shall be made by the City only for the following purposes and in the following order of priority:

(1) For the payment of the then payable principal of, premium, if any, and interest on the Prior Bonds and the Series 1987 A Bonds if there are not sufficient funds therefor in the Sewerage System Sinking Fund and the Series 1987 A Sinking Fund (including the Sewerage System Reserve Account and the Series 1987 A Bonds Reserve Account);

(2) To make up any deficiency in the Sewerage System Reserve Account and the Series 1987 A Bonds Reserve Account (so that the amount on deposit therein are at least equal to the Sewerage System Reserve Account Requirement and the Series 1987 A Bonds Reserve Account Requirement), subject to the provisions of the Prior Ordinance and Section 4.01 hereof; and

(3) For the payment of the reasonable costs of replacements, emergency repairs, improvements or extensions to the System;

D. The City shall restore any withdrawals from the Sewerage System Reserve Account and the Series 1987 A Bonds Reserve Account which have the effect of reducing the value of the funds therein below the Sewerage System Reserve Account Requirement and the Series 1987 A Bonds Reserve Account Requirement, first from moneys then remaining in the Revenue Fund and next from funds deposited in the Sewerage System Depreciation Fund and then from the first Net Revenues available after all required deposits to the Sewerage System Sinking Fund and the Series 1987 A Sinking Fund therein, including deposits in respect of deficiencies for prior deposits, have been made in full; provided, that the City shall not be required to restore any withdrawal when the sum in the Sewerage System Sinking Fund and the Series 1987 A Sinking Fund therein, and all accounts therein of cash, Government Obligations and interest to be earned on such Government Obligations, without reinvestment, is at least equal to the

principal amount of the Prior Bonds and the Series 1987 A Bonds then outstanding plus the amount of interest due or thereafter to become due thereon.

E. (1) On the first day of each month, beginning on the first day of that month which is 13 months prior to the first principal payment date of the Series 1987 B Bond, the City shall apportion and set apart out of the Revenue Fund and remit to the Bond Commission for deposit in a subaccount in the Sewerage System Sinking Fund an account to be designated the "Series 1987 B Sinking Fund" which is hereby created and established with the Bond Commission, a sum equal to one-twelfth of the amount of principal which will mature and become due on the Series 1987 B Bond on the next ensuing principal payment date; provided, that "next ensuing principal payment date" shall not refer to the principal payment date on which any such deposit is made. The last monthly deposit to be made in each twelve-month period to pay principal on the next ensuing annual principal payment date may be reduced to the extent that deposits made for the eleven preceding months, together with any other moneys on deposit in the Series 1987 B Sinking Fund for the payment of principal, would be sufficient with such reduced monthly deposit to make the next ensuing annual principal payment.

(2) Unless the City has funded the Series 1987 B Bond Reserve Account with Bond proceeds, the City shall next, from the Revenue Fund, remit to the Bond Commission for deposit in an account to be designated the "Series 1987 B Bond Reserve Account," which is hereby created and established in the Series 1987 B Sinking Fund, on the first day of each month of each year, beginning with and including the month in which the payments required by Section 4.01 E (1) are commenced, an amount equal to 1/12th of 1/10th of the Series 1987 B Bond Reserve Account Requirement; provided that no further payments shall be made into the Series 1987 B Bond 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 B Bond Reserve Account Requirement. So long as there is on deposit in the Series 1987 A Bond Reserve Account an amount equal to the Series 1987 A Bond Reserve Requirement, the Bond Commission shall transfer to the City and deposit in the Revenue Fund for payment into the Series 1987 A Sinking Fund semi-annually all investment earnings on the Series 1987 A Bond Reserve Account.

Moneys in the Series 1987 B Bond Reserve Account shall be used only for the purpose of paying the principal of the Series 1987 B Bond as the same shall become due, when other moneys in the Series 1987 B Sinking Fund are insufficient therefor, and for no other purpose.

Any withdrawals from the Series 1987 B Bond Reserve Account shall be subsequently restored from the first Net Revenues available after all required payments to the Sewerage System Sinking Fund, including all required payments to the Series 1987 A Sinking Fund, the Sewerage System Reserve Account and the Series 1987 A Bonds Reserve Account therein, Sewerage System Depreciation Fund, Series 1987 B Sinking Fund, including any deficiencies for prior payments, have been made in full.

F. On such dates as the Bond Commission shall require, the City shall remit to the Bond Commission such additional sums from the Revenue Fund as shall be necessary to pay the fiscal agency charges due for paying the Prior Bonds and the Series 1987 A Bonds and the interest thereon and the Series 1987 B Bond.

Pending such application, moneys in the Revenue Fund shall be invested in accordance with Article VI hereof.

Moneys on deposit in the Series 1987 A Sinking Fund shall be used only for the purposes of paying the principal of and the interest on the Series 1987 A Bonds, as the same shall become due. Moneys on deposit in the Series 1987 B Sinking Fund shall be used only for the purpose of paying principal of the Series 1987 B Bond as the same shall become due.

The City shall not be required to make further deposits into the Sewerage System Sinking Fund, including the Series 1987 A Sinking Fund, the Sewerage System Reserve Account and the Series 1987 A Bonds Reserve Account therein, and the Series 1987 B Sinking Fund and the Series 1987 B Bond Reserve Account therein when the sums of cash, Government Obligations and interest to be earned on such Government Obligations, without reinvestment, in the Sewerage System Sinking Fund, the Series 1987 A Sinking Fund and the Series 1987 B Sinking Fund and Reserve Accounts therein are at least equal to the respective principal amounts of the Prior Bonds, the Series 1987 A Bonds and Series 1987 B Bond then outstanding plus the amount of any interest due or thereafter to become due thereon.

As and when additional bonds are issued, provision shall be made for additional deposits into the respective Sinking Funds sufficient to pay the interest on such additional Bonds and accomplish retirement thereof at or before maturity.

Deposits into the respective Sinking Funds shall be made on the first day of each month, except that, when the first day of any month shall be a Saturday, Sunday or legal holiday, then such deposit shall be made on the next succeeding business day. All such deposits shall be remitted to the Bond

Commission with appropriate instructions, consistent with the provisions of this Supplemental and Amendatory Ordinance, as to the custody, use and application of the funds deposited.

G. Whenever all the required transfers and deposits from the Revenue Fund have been made and there remains on deposit in the Revenue fund an amount exceeding the amount estimated to be required to be paid for Operating Expenses during the then current Fiscal Year and the next ensuing Fiscal Year, as determined by resolution of the Sanitary Board, such excess may be transferred to the Sewerage System Depreciation Fund or used for any lawful purpose of the System, including payment on other obligations junior, subordinate and inferior to the Prior Bonds, the Series 1987 A Bonds and the Series 1987 B Bond, as directed by the Sanitary Board.

H. If on any payment date Net Revenues are insufficient to make the transfers and deposits hereinabove provided, the deficient transfer or deposit shall be corrected on the next ensuing payment date by payments in addition to the payments otherwise required to be made on such payment date.

I. The Bond Commission hereby is designated as the fiscal agent for the administration of the respective Sinking Funds. All amounts to be deposited into the respective Sinking Funds shall be remitted by the City to the Bond Commission, as provided herein. All such remittances shall identify clearly the fund or account into which such remittance is to be deposited.

J. Funds on deposit in the Revenue Fund, excess proceeds of the Series 1987 A Bonds and Series 1987 B Bond and the Sewerage System Depreciation Fund in excess of the amount insured by the FDIC shall be secured at all times to the full extent of such excess by such Qualified Investments as are eligible under the laws of the State to secure deposits of municipal funds.

K. Gross Revenues will be used only for the lawful purposes of the System.

Section 4.02. Bond Construction Trust Fund. There is hereby created and established with the Depository Bank a special fund, to be designated the "City of Williamstown Project Bond Construction Trust Fund," which fund shall be segregated from all other funds and accounts of the Depository Bank or the City and used solely for the purposes provided herein.

Disbursements from the Bond Construction Trust Fund, except for the costs of issuance of the Series 1987 A Bonds and Series 1987 B Bond which shall be made upon request of the City, shall be made only after submission to the Depository Bank of a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any 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 Bond Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Bond Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Bond Construction Trust Fund. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

No moneys shall be disbursed from the Bond Construction Trust Fund except to pay the Cost of the Project. Withdrawals from the Construction Fund, except for legal, fiscal expenses and expenses in connection with the issuance and sale of the Series 1987 A Bonds and Series 1987 B Bond, shall be made only after submission to the Depository Bank of a certificate, signed by the Consulting Engineers and an Authorized Officer of the City, stating that such costs have been properly incurred, that such costs are part of the Cost of the Project, and that payment is then due and owing.

Pending such application, moneys in the Bond Construction Trust Fund including any accounts therein may be invested and reinvested in Qualified Investments at the direction of the City.

The Bond Construction Trust Fund shall constitute a trust fund for the purposes described above, and there is hereby created a lien upon such moneys until so applied first in favor of the holders of the Series 1987 A Bonds, without preference or priority of one over the other and second in favor of the holders of the Series 1987 B Bond.

After completion of the Project, as certified by the Consulting Engineers, any moneys remaining in the Bond Construction Trust Fund shall be applied to (i) the Series 1987 A Bonds Reserve Account, up to the amount of the Series 1987 A Bonds Reserve Account Requirement, (ii) the Series 1987 B Bond Reserve Account up to the amount of the Series 1987 B Bond Reserve Account Requirement, and (iii) any remaining amount to the Revenue Fund with the City to apply such moneys in full first, to the next ensuing interest payments due on the Series 1987 A Bonds, second, to the next ensuing principal payment due on the Series 1987 A Bonds, and, third, to the next ensuing principal payment on the Series 1987 B Bond.

Section 4.03. Tap Fee Account. All proceeds from any Tap fees imposed and collected by the City shall be deposited in a special account, to be designated the "City of Williamstown Project Tap Fee Account" (the "Tap Fee Account"), which is hereby created and established in the Bond Construction Trust Fund. The City shall pay promptly out of the Tap Fee Account the costs of connection to the System. Any amounts remaining in the Tap Fee Account after connections have been made for all customers who paid such Tap Fees shall be considered excess and shall be transferred by the Depository Bank to the Bond Construction Trust Fund and used for authorized purposes thereof for as long as such Construction Fund remains in existence, and thereafter to the Revenue Fund.

Section 4.04. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of any or all of the Series 1987 A Bonds and Series 1987 B Bond, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 1987 A Bonds, there shall be deposited with the Bond Commission in the Series 1987 A Bonds Sinking Fund, the amount, if any, specified in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 1987 A Bonds for the period commencing on the date of issuance of the Bond and ending six (6) months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 1987 A Bonds, there shall be deposited with the Bond Commission in the Series 1987 A Bonds Reserve Account and from the proceeds of the Series 1987 B Bond there shall be deposited with the Bond Commission in the Series 1987 B Bond Reserve Account the respective sums, if any, set forth in the Supplemental Resolution for funding of the Reserve Accounts.

C. The remaining moneys derived from the sale of the Series 1987 A Bonds and Series 1987 B Bond shall be deposited with the Depository Bank in the Bond Construction Trust Fund and applied solely to payment of the Cost of the Project in the manner set forth in Section 4.02 above.

D. The Depository Bank shall act as a trustee and fiduciary for the holder of the Series 1987 A Bonds and Series 1987 B Bond with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in this Supplemental and Amendatory Ordinance. Moneys in the Bond Construction Trust Fund shall be used solely to pay the Cost of the Project and until so expended, are hereby pledged as additional security for the Series 1987 A Bonds, and thereafter for the Series 1987 B Bond. In the event that Notes are issued, the disposition of funds in the Bond Construction Trust Fund may be modified from that set forth herein, with the written consent of the Authority.

## ARTICLE V

### ADDITIONAL COVENANTS OF THE CITY

Section 5.01. General Covenants of the City. All covenants, agreements and provisions of this Supplemental and Amendatory Ordinance shall be and constitute valid and legally binding covenants of the City and shall be enforceable in any court of competent jurisdiction by any holder or holders of the Series 1987 A Bonds and the Series 1987 B Bond, as prescribed by Article VII hereof. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, for as long as the Series 1987 A Bonds and the Series 1987 B Bond remain outstanding.

Section 5.02. Series 1987 A Bonds and Series 1987 B Bond not to be Indebtedness of the City. The Series 1987 A Bonds and Series 1987 B Bond shall not be a corporate indebtedness of the City within the meaning of any statutory or

constitutional limitation but shall be payable solely from Sewerage System Net Revenues, the funds in the Sewerage System Sinking Fund and all accounts therein and from funds in the Sewerage System Depreciation Fund, and as to any series of Bonds, from the unexpended proceeds derived from the sale of that series. No Holder or Holders of any of the Series 1987 A Bonds or the Series 1987 B Bond shall ever have the right to compel the exercise of the taxing power of the City to pay the principal of, premium, if any, or interest on the Series 1987 A Bonds or the Series 1987 B Bond.

Section 5.03. Series 1987 A Bonds and Series 1987 B Bond Secured by Pledge of Net Revenues, Funds and Unexpended Bond Proceeds. The payment of the debt service of the Series 1987 A Bonds issued hereunder shall be secured forthwith by a first lien on and pledge of the Net Revenues on a parity with the Prior Bonds and any other parity bonds hereafter issued and outstanding under the Prior Ordinance or this Supplemental and Amendatory Ordinance. The payment of the debt service of the Series 1987 B Bond issued hereunder shall be secured forthwith by a second lien on and pledge of the Net Revenues. Net Revenues in an amount sufficient to pay the principal of, premium, if any, and interest on first, the Prior Bonds and the Series 1987 A Bonds, equally and without priority of one over the other, and second, the Series 1987 B Bond, and to make the deposits into the respective Sinking Funds and all other payments provided for in this Supplemental and Amendatory Ordinance, and the funds on deposit in the respective Sinking Funds and the Sewerage System Depreciation Fund, are pledged irrevocably hereby in the manner provided in this Supplemental and Amendatory Ordinance to the payment of the principal of, premium, if any, and interest on first, the Prior Bonds and Series 1987 A Bonds, equally and without priority of one over the other, and second, the Series 1987 B Bond, as the same becomes due and for the other purposes provided in this Supplemental and Amendatory Ordinance. The City hereby pledges the unexpended proceeds, if any, of the Series 1987 A Bonds and Series 1987 B Bond as additional security for payment of the principal of, premium, if any, and interest on first, the Series 1987 A Bonds, and second the Series 1987 B Bond, until expended in accordance with the provisions of this Supplemental and Amendatory Ordinance.

Section 5.04. Rates. The City hereby covenants and agrees that as long as either the Series 1987 A Bonds or the Series 1987 B Bond is outstanding it will fix, establish and collect System rates and charges which always shall provide Net Revenues along with other revenues of the System, after paying all Operating Expenses, equal to not less than one hundred fifteen percent (115%) of the maximum annual amount required to

pay the interest and principal as the same become due and accomplish retirement of all Bonds, or other obligations for the payment of which Net Revenues have or shall have been pledged, charged or otherwise encumbered provided, however, that as long as there is on deposit in (i) the Sewerage System Reserve Account in the Sewerage System Sinking Fund established by Section 3.03 B of the Prior Ordinance, an amount equal to the Sewerage System Reserve Account Requirement, (ii) the Series 1987 A Bonds Reserve Account in the Series A Sinking Fund established by Section 4.01B of this Supplemental and Amendatory Ordinance an amount equal to the Series 1987 A Bonds Reserve Account Requirement, (iii) the Series 1987 B Bond Reserve Account in the Series B Sinking Fund established by Section 4.01E of this Supplemental and Amendatory Ordinance an amount equal to the Series 1987 B Bond Reserve Account Requirement, and (iv) any other reserve account requirements, the foregoing percentage may be adjusted by the City to one hundred ten percent (110%).

Section 5.05. Completion, Operation and Maintenance, Right of Access. The City will expeditiously complete the Project and will provide and maintain competent and adequate resident engineering services satisfactory to the City and the Authority for the supervision and inspection of the construction of the Project, and bearing the responsibility of assuring the construction conforms to the Plans and Specifications and shall require its resident engineer to certify to the Authority and the City at the completion of construction that construction is in accordance with the Plans and Specifications. Upon completion of the construction, the City will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner in compliance with the water quality standards established by the West Virginia Department of Natural Resources and the EPA, as well as all other State and Federal laws, regulations, orders, and standards, with qualified operating personnel properly certified, making expenditures for equipment and for the economical operation and maintenance thereof from Gross Revenues as provided in this Supplemental and Amendatory Ordinance. As long as the Authority shall hold the Series 1987 A Bonds or the Series 1987 B Bond, the Authority, the EPA and their duly authorized agents shall have the right at all reasonable times to enter upon the System to examine and inspect the same and shall, prior to, at and after completion of construction and commencement of operation of the Project, have such rights of access to the System as may be reasonably necessary to accomplish all of the powers and rights of the Authority in respect of the System pursuant to the pertinent provisions of the Water Development Act.

Section 5.06. Issuance of Other Obligations Payable out of Sewerage System Net Revenues and General Covenant Against Encumbrances. The City shall not issue any other obligations payable from Net Revenues, which as to lien, security and source of payment rank prior or equal to the Prior Bonds and Series 1987 A Bonds. The City shall not issue any other obligations payable from Net Revenues, which as to lien, security and source of payment, rank prior or equal to the Series 1987 B Bond, except additional parity Sewerage System Bonds as provided in Section 5.06 hereof which shall only be issued if Net Revenues of the System prior to issuance of the parity Sewerage System Bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Bonds and parity bonds theretofore and then being issued and on obligations secured by or payable from the revenues of the System prior to the Bonds, if any, provided, however, that additional parity bonds may be issued to complete the Project, as provided in Section 5.06 hereof.

All obligations issued by the City after the issuance of the Bonds and payable from the Net Revenues of the System, except such additional parity bonds provided for by section 5.06, 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 Prior Bonds, the Series 1987 A Bonds and the series 1987 B Bond; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the respective Reserve Accounts and the Sewerage System Depreciation Fund at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the City 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 the Prior Ordinance and this Supplemental and Amendatory Ordinance, or upon the System or any part thereof.

Section 5.07. Additional Bonds on a Parity with the Series 1987 B Bond. No additional bonds shall be issued after the issuance of the Series 1987 B Bond as long as the Series 1987 B Bond is outstanding, except with the written consent of the holder of the Series 1987 B Bond, payable from Net Revenues on a parity with the Series 1987 B Bond.

The term "additional parity bonds," as used in this Section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on Net Revenues is subject and junior to the prior and superior lien thereon of the Series 1987 B Bond.

Anything to the contrary in this Section notwithstanding, the City, with the consent of the Authority, may issue additional parity bonds if required to complete the Project, according to the Plans and Specifications as described in the application filed with the Authority, without meeting the foregoing requirements.

Section 5.08. Construction and Fidelity Bonds; Workers' Compensation. The City will provide and maintain or, will require each contractor dealing directly with the City to provide and maintain: (i) Workers' Compensation coverage, (ii) public liability insurance; (iii) property damage insurance; (iv) vehicular liability insurance, all in amounts and on terms satisfactory to the City and the Authority and (v) performance and payment bonds in amounts of not less than 100% of the construction contracts. The City shall file such payment bonds with the Clerk of the County Commission of Wood County prior to the commencement of construction of the Project in compliance with Chapter 38, Article 2, Section 29 of the Code of West Virginia of 1931, as amended. The City will maintain in force Workers' Compensation coverage for employees of the City, and will obtain for and maintain in force for every officer or employee of the City having custody of any funds of the System fidelity bonds in an amount at least equal to the total amount of funds in the custody of such officer or employee at any one time. 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 shall be obtained by the City before the Bonds are issued, and maintained as long as any of the Bonds is outstanding. Prior to commencing operation of the Project, the City will also obtain, and maintain as long as any of the Bonds is outstanding, business interruption insurance, if available at a reasonable cost.

Section 5.09. Redemption of Bonds Held by Authority. As long as the Authority is the owner of any of the Series 1987 A Bonds and Series 1987 B Bond outstanding, the City shall not redeem any Series 1987 A Bonds and Series 1987 B Bond outstanding without the written consent of the Authority, and any such redemption of a Series 1987 A Bond and Series 1987 B Bond authorized by the Authority shall provide for the payment of interest to the first allowable redemption date for the

applicable water development revenue bonds, the redemption premium payable on the applicable water development revenue bonds redeemable as a consequence of such redemption of Series 1987 A Bonds and Series 1987 B Bond and the costs and expenses of the Authority in effecting any such redemption, all as further prescribed by Section 9.11 of the General Resolution.

Section 5.10. Payment of Program Expenses. As long as the Series 1987 A Bonds and Series 1987 B Bond are held by the Authority, the City agrees to pay from time to time, as required by the Authority, the City's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be as determined by the Authority and shall include without limitation Program expenses and fees paid to the trustee and paying agents for the water development revenue bonds. The City hereby specifically authorizes the Authority to exercise the powers granted it by Section 9.06 of the General Resolution.

In the event the City defaults in the payment of any fees due to the Authority pursuant to this section, the amount of such default shall bear interest at the rate of 8.375% per annum, from the date of default until the date of the payment thereof.

Section 5.11. Authority Rights on Default. As long as the Authority shall hold the Series 1987 A Bonds or the Series 1987 B Bond, the City hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the City, the Authority may exercise any or all of the rights and powers granted under Section 6a of the Water Development Act, including without limitation the right to impose, enforce and collect directly charges upon users of the System; and the City hereby covenants and agrees that, if the Authority should hereafter have recourse to the rights and powers, the City shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority.

Section 5.12. Authority Approval of Federal Pollution Abatement Assurance. The City hereby covenants and agrees to secure approval of the Authority and all other State agencies having jurisdiction before hereafter applying for federal financial assistance for pollution abatement.

Section 5.13. Qualified Tax Exempt Obligation Covenants. The City hereby designates the Series 1987 A Bonds and Series 1987 B Bond as qualified tax-exempt obligations as defined in Section 265(6)(3)(B) of the Code. The City further certifies and covenants with the holders of the Series 1987 A

Bonds and Series 1987 B Bond that (i) neither of the Series 1987 A Bonds nor the Series 1987 B Bond is a private activity bond; (ii) neither the City nor any agency, board, subdivision nor other subordinate entity of the City during the calendar year 1987 has designated any tax-exempt obligation issued by the City, or any other agency, board, subdivision or subordinate entity as a qualified tax-exempt obligation; (iii) the City, or any agency, board, subdivision or other subordinate entity of the City, during the calendar year 1987, does not as of the date hereof reasonably anticipate to issue qualified tax-exempt obligations, including 501(c)(3) Bonds but excluding other private activity bonds, in excess of \$10,000,000; and (iv) the City or any agency, board, subdivision, or other subordinate entity of the City will not during the calendar year 1987 designate any additional tax-exempt obligations including qualified 501(c)(3) Bonds but excluding other private activity bonds, as qualified tax-exempt obligations of the City, if the effect of such designation would be to cause the total aggregate amount of qualified tax-exempt obligations of the City or any agency, board, subdivision or subordinate entity of the City issued during calendar year 1987 to exceed \$10,000,000.

Section 5.14. Sale of the System. 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 defease the pledge created by this Ordinance as provided by Section 8.01 hereof. The proceeds from such sale, mortgage, lease or other disposition of the System immediately shall be remitted to the Bond Commission for deposit in the Sewerage System Sinking Fund, and otherwise as prescribed by Section 8.01. Any balance remaining after such defeasance shall be remitted to the City by the Bond Commission unless necessary for the payment of other obligations of the City payable out of System Gross Revenues. No such sale, lease or other disposition shall be made by the City if the proceeds to be derived therefrom shall be insufficient to defease the pledge created by this Supplemental and Amendatory Ordinance, as provided by Section 8.01 hereof, without the prior approval and consent in writing of the holders, or their duly authorized representatives, of sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of, the Series 1987 A Bonds and 1987 Series B Bond then Outstanding.

Section 5.15. Arbitrage Covenants. The City hereby certifies, and covenants with the holders of the Series 1987 A Bonds and the Series 1987 B Bond that (i) it is a governmental unit with general taxing powers; (ii) the Series 1987 A Bonds and Series 1987 B Bond are not private activity bonds as

defined in Section 141 (a) of the Code; (iii) not less than 95% of the proceeds of the Series 1987 A Bonds and Series 1987 B Bond is to be used for local governmental activities of the City; (iv) the face amount of all tax-exempt bonds other private activity bonds issued or to be issued by the City, or all subordinate entities thereof, during the calendar year 1987 is not as of the date hereof reasonably expected to exceed \$5,000,000 and therefore is eligible for the arbitrage rebate exception for small governmental units provided by Section 148(f)(4)(C) of the Code.

Section 5.16. Reporting Requirements. The City will file all reports or statements necessary to insure the tax-exempt status of the Series 1987 A Bonds and Series 1987 B Bond, including without limitation, the information return required under Section 150(e) of the Code.

Section 5.17. Insurance. The City shall carry with a reputable insurance carrier or carriers such insurance as is customarily carried with respect to works and properties similar to the System, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. In time of war, the City also shall carry such insurance as may be available against loss or damage by the risks and hazards of war. Such insurance at all times shall be maintained in an amount equal to the fair appraisal value of the buildings, properties, furniture, fixtures and equipment of the System. The proceeds of all such insurance policies shall be placed in the Sewerage System Depreciation Fund and used only for repairs to and restoration of damaged or destroyed properties of the System, or for the other purposes herein for which moneys in the Sewerage System Depreciation Fund may be applied. The City also shall carry liability insurance for injury or damage to persons or property in such amounts as are adequate for such purposes and customarily carried with respect to works and properties similar to the System.

Section 5.18. Service Rendered to the City. The City will not render or cause to be rendered any free services of any nature by the System; and, in the event the City or any department, agency, instrumentality, officer or employee of the City shall avail itself or himself 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 City and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the City shall transfer from its general funds sufficient sums to pay such charges. The revenues so received shall be deemed

to be Sewerage System Gross Revenues, as the case may be, and shall be deposited and accounted for in the same manner as other Sewerage System Gross Revenues.

Section 5.19. Enforcement of Collections. The City diligently will enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of such fees, rates, rentals or other charges as shall become delinquent to the full extent permitted or authorized by the Sewer Act or otherwise by the laws of the State. Subject to applicable State law and regulations, and under such reasonable rules and regulations as may be prescribed by the City, the City shall discontinue both water and sewer service to all delinquent users of sewer service and shall not resume such services until all such delinquent amounts, including reasonable interest and penalty charges, have been paid in full.

Section 5.20. No Competing Franchise. To the extent legally allowable, the City will not grant or cause, consent to, or allow the granting of any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 5.21. Books and Records. The City will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the System, and any holder of the Series 1987 A Bonds or the Series 1987 B Bond shall have the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the City relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles, to the extent allowable under and in accordance with the rules and regulations of the Public Service Commission of the State, and the Sewer Act.

The City shall mail in each year to any holder of the Series 1987 A Bonds or the Series 1987 B Bond requesting the same, a statement of System Gross Revenues, System Operating Expenses and System Net Revenues; and balance sheet statement showing all deposits in all the funds and accounts provided for in this Supplemental and Amendatory Ordinance with respect to the System, and the status of all said funds.

The City also, at least once a year, shall cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any holder of the Series 1987 A Bonds or the Series 1987 B Bond, and shall file said report with the Authority. Said reports shall be completed and made available within 120 days following the conclusion of each Fiscal Year. Such audit reports shall include mention of any failure of the City to observe the covenants and duties herein provided.

Section 5.22. Initial Schedule of Rates. The rates, fees and other charges for the use of the services and facilities of the System, established under ordinances enacted by the Council on or before the effective date of this Ordinance and in full force and effect, or ordered by the Public Service Commission of the State, the time for appeal of such rates, fees and other charges having expired, shall constitute the initial schedule, rates, fees and charges to be collected for use of the services and facilities of the System.

Section 5.23. Operating Budget. Annually, at least 30 days preceding the beginning of each Fiscal Year, or at such earlier date required by the Charter of the City, the City shall prepare and adopt by resolution detailed budgets of the estimated expenditures for operation and maintenance of the System during the succeeding Fiscal Year. The City shall mail copies of such annual budgets and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and shall make available such budget and all such resolutions at all reasonable times to the Authority and, upon request, to any holder of the Series 1987 A Bonds and the Series 1987 B Bond.

Section 5.24. Mandatory Sewer 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 of, and the economy of, the City and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory serviced by the System. Accordingly, within the geographic limits of the City and subject to applicable State laws and regulations, every owner, tenant and occupant of every lot, parcel and tract of land that abuts on a street, alley or other public way in which any sewer line, main or facility is located, or which is located within a reasonable distance thereof, not exceeding two hundred fifty (250) feet, and is reasonably accessible thereto, and upon which lot, parcel or tract a building or other habitable

structure has been or shall be erected for residential, commercial or industrial use, shall connect the waste or sewerage lines of such building or structure with the System if sewage will flow by gravity from such building or structure into the System and shall thereupon and thereafter refrain from using and shall cease to use any other method for the disposal of sewage or water-borne waste matter and shall pay all charges, fees and rates lawfully provided for use of the System.

Within the geographic limits of the city and subject to applicable State laws and regulations, any such building or structure from which emanates sewage or water-borne waste matter and 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 City and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 5.25. Concerning Arbitrage and Rebates. The proceeds of sale of the Series A Bonds and the Series B Bond will not be invested in such a way as to violate the requirements of the Code, and the regulations of the Internal Revenue Service or of the Treasury Department of the United States of America in connection with the arbitrage provisions of Sections 103 and 148 of the Code. No portion of the proceeds of the Series A Bonds and the Series B Bond will be used (directly or indirectly) so as to cause the Series A Bonds or the Series B Bond to be an "arbitrage bond" within the meaning of Sections 103 and 148 of the Code.

Unless otherwise excepted, the City will make, or cause to be made, all rebate calculations and payments in the time, manner and as required in Section 148(f) of the Code. In the event of a failure to pay such amounts, the Issuer will pay to the United States a penalty in an amount equal to the sum of 50% of the amount not paid, plus interest at the required rate on the portion of the amount which was not paid on the required date, beginning on such date, unless waived by the Secretary. The City shall maintain and provide the Authority with appropriate records of such computations and payments.

Section 5.26. Private Activity Bond Covenant. The City shall not permit at any time or times any of the proceeds of the Series 1987 A Bonds or the Series 1987 B Bond or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Series 1987 A Bonds or the Series 1987 B Bond from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986 (including any amendments and successor provisions thereto and the rules and regulations thereunder, the "Code"), by reason of

the classification of the Series 1987 A Bonds or the Series 1987 B Bond as a "private activity bond" within the meaning of the Code. The City will take all actions necessary to comply with the Code to be promulgated thereunder.

## ARTICLE VI

### INVESTMENTS: NON-ARBITRAGE

Section 6.01. Investments. The City shall invest and reinvest, and hereby instructs the Bond Commission and the Depository Bank to invest and reinvest, in Qualified Investments any moneys held as part of the funds and accounts created by this Supplemental and Amendatory Ordinance to the fullest extent possible subject to applicable laws, this Supplemental and Amendatory Ordinance and the need for such moneys for the purposes set forth herein. The City may direct the Bond Commission and the Depository Bank in writing as to what particular permitted investments shall be made.

Except as provided below, any investment shall be held in and at all times be deemed a part of the fund or account in which the moneys and investments are held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the corresponding fund or account. The investments held by the Depository Bank shall be valued as of each January 1 and July 1 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; provided, that no investment shall be sold or reduced by reason of the current market value exceeding the cost thereof. Funds in the consolidated fund managed by the West Virginia State Board of Investments shall be valued at par. The Bond Commission or the Depository Bank, 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 any loss on such liquidation. The City may invest funds on deposit with the Depository Bank through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, except losses due to its own gross negligence or willful misconduct.

Qualified Investments may be purchased for the respective Sinking Funds, including the accounts therein, and for the Sewerage System Depreciation Fund, either in the open market or from the Bond Construction Trust Fund. If purchased

from the Bond Construction Trust Fund, such Qualified Investments shall be purchased at prices equal to their original purchase prices plus accrued interest.

Qualified Investments acquired for the Sewerage System Depreciation Fund shall mature or be subject to redemption at the option of the holder within three years from the date of such investment.

Qualified Investments acquired for the Bond Construction Trust Fund shall mature or be subject to redemption at the option of the holder within one year from the date of such investment or at such time as funds on deposit in the Bond Construction Trust Fund are scheduled to be applied for the purpose thereof; provided, that the maturities of any Qualified Investments scheduled to be purchased from the Bond Construction Trust Fund for the respective Reserve Accounts or the Sewerage System Depreciation Fund within one year after the purchase thereof for the Bond Construction Trust Fund may exceed one year.

Qualified Investments acquired for the respective Reserve Accounts shall mature or be subject to redemption at the option of the holder within five years from the date of such investment.

Section 6.02. Restrictions as to Arbitrage Bonds.

The City hereby covenants, and hereby instructs the Bond Commission and the Depository Bank, that it shall not permit the proceeds of the Bonds or any other funds of the City to be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause any Bond to be an "arbitrage bond" as defined in Section 148(a) of the Internal Revenue Code of 1986, as amended. Upon original issuance of any series of Bonds, an Authorized Officer of the City shall certify certain facts and expectations tending to establish that such Bonds are not such arbitrage bonds.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Events of Default. Occurrence of any of the following events shall constitute an "Event of Default" with respect to the Series 1987 A Bonds and Series 1987 B Bond:

A. Default in the due and punctual payment of the principal or, premium, if any, or interest on any of the Bonds;

B. Default in the observance by the City of any of the covenants, agreements or conditions on its part in this Supplemental and Amendatory Ordinance, the Prior Ordinance, or any Supplemental Resolution or in the Bonds contained with respect to the Bonds (except as provided in paragraph A above), and continuance thereof for a period of 30 days after written notice specifying such default and requiring that the same be remedied shall have been given to the City by any holder of the Prior Bonds, Series 1987 A Bonds and Series 1987 B Bond; or

C. The filing by the City of a petition seeking bankruptcy, reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of American or of the State.

Section 7.02. Enforcement. Upon the occurrence and during the continuance of any Event of Default, any holder of the Series 1987 A Bonds and Series 1987 B Bond, may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights. Without limiting the generality of the foregoing, the remedies available to a holder of the Series 1987 A Bonds and Series 1987 B Bond shall include any and all remedies set forth in Section 7.02 of the Prior Ordinance.

No remedy by the terms of this Supplemental and Amendatory Ordinance conferred upon or reserved to the holders of the Series 1987 A Bonds and Series 1987 B Bond, is intended to be exclusive of any other remedy, but each and every remedy shall be cumulative and shall be in addition to any other remedy given to the holders of any Series 1987 A Bonds and Series 1987 B Bond, hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the holders of the Series 1987 A Bonds or Series 1987 B Bond shall extend to or affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

Section 7.03. Appointment of Receiver. If any Event of Default shall have occurred and be continuing, in addition to all other remedies or rights, any holder of the Series 1987

A Bonds and Series 1987 B Bond, shall have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the City, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of, premium, if any, and interest on the Bonds, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses, and to apply such rates, rentals, fees, charges and any other Gross Revenues in conformity with the provisions of this Supplemental and Amendatory Ordinance and the Water Development Act.

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

Whenever all that is due upon the Series 1987 A Bonds and Series 1987 B Bond, and interest thereon, if any, and under any covenants of this Supplemental and Amendatory Ordinance for the funds and accounts hereby established, and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the Net Revenues, shall have been paid and made good, and all defaults under the provisions of this Supplemental and Amendatory Ordinance shall have been cured and made good, possession of the System shall be surrendered to the City upon the entry of an order of the court to that effect. Upon any subsequent Event of Default, any holder of the Series 1987 A Bonds and Series 1987 B Bond, shall have the same right to secure the further appointment of a receiver.

Such receiver, in the performance of the powers hereinabove conferred, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed at the direction 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 City and for the joint protection and benefit of the City and first the holder of the Series 1987 A Bonds and second the holder of the Series 1987 B 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 and the collection of rates and charges related to the services provided by the System, for the sole purpose of the protection of both the City and first the holders of the Series 1987 A Bonds and second the holder of the Series 1987 B Bond, and the curing and making good of any Event of Default under the provisions of this Supplemental and Amendatory Ordinance, and the title to and ownership of the System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Section 7.04. Restoration of City and Holder of the Bonds. In case any holder of the Series 1987 A Bonds or Series 1987 B Bond shall have proceeded to enforce any right under this Supplemental and Amendatory Ordinance by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the claims of such holder of the Series 1987 A Bonds and Series 1987 B Bond, then and in every such case the City and such holder shall be restored to their former positions and rights hereunder, and all rights and remedies of such holders of the Series 1987 A Bonds and Series 1987 B Bond, shall continue as if no such proceedings had been taken, subject to such adverse determination as the court in such proceedings shall have made.

#### ARTICLE VIII

##### REGISTRAR; PAYING AGENT

Section 8.01. Appointment of Registrar. The Registrar of the Series 1987 A Bonds and Series 1987 B Bond shall be appointed by the enactment of a Supplemental Resolution.

#### ARTICLE IX

##### DEFEASANCE; DISCHARGE OF PLEDGE

Section 9.01. Defeasance; Discharge of Pledge. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the holders of the Series 1987 A Bonds,

the principal of, premium, if any, and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Supplemental and Amendatory Ordinance, then this Supplemental and Amendatory Ordinance and the pledges of Net Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the City on behalf of the holders of the Series 1987 A Bonds, made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied.

If the City shall pay or cause to be paid, or there shall otherwise be paid, to the holder of the Series 1987 B Bond, the principal of, premium, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Supplemental and Amendatory Ordinance, then this Supplemental and Amendatory Ordinance and the pledges of Net Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the City on behalf of the holder of the Series 1987 B Bond, made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1987 A Bonds and Series 1987 B Bond, for the payment of which either moneys in an amount which shall be sufficient, or Government Obligations the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of, premium, if any, and interest on such Series 1987 A Bonds and Series 1987 B Bond, shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section. Prior to the maturity thereof all Series 1987 A Bonds and Series 1987 B Bond, shall 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 Bond Commission or irrevocably in trust with the Depository Bank, as the case may be, either moneys in an amount which shall be sufficient, or Government Obligations the principal of and the interest on which, when due, without reinvestment, will provide moneys which, together with the moneys, if any, deposited with the Bond Commission or the Depository Bank, as the case may be, at the same or earlier time will be sufficient, to pay when due the principal of, premium, if any, and interest due and to become due on the Series 1987 A Bonds and Series 1987 B Bond, on and prior to the maturity date thereof. Neither Government Obligations nor moneys deposited with the Bond Commission or the Depository Bank, as the case may be, pursuant to this Section, nor principal or interest payments on any such Government

Obligations, shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of, premium, if any, and interest on the Series 1987 A Bonds and Series 1987 B Bond; provided, that any cash received from such principal or interest payments on such Government Obligations deposited with the Bond Commission or the Depository Bank, as the case may be, if not then needed for such purpose, to the extent practicable shall be reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the principal of, premium, if any, and interest, if any, to become due on the Series 1987 A Bonds and Series 1987 B Bond, on and prior to the maturity dates thereof.

#### ARTICLE X

#### MISCELLANEOUS

Section 10.01. Amendment of Supplemental and Amendatory Ordinance. No amendment or modification to this Supplemental and Amendatory Ordinance or to any Supplemental Resolution which is materially adverse to the holder of any Series 1987 A Bond and Series 1987 B Bond, may be made without the prior written consents, filed with the City Clerk of the City before any such modification or amendment may be made, of the holders of sixty percent in aggregate principal amount of the Series 1987 A Bonds and Series 1987 B Bond, then outstanding. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of, premium, if any, or interest on, any Series 1987 A Bond or Series 1987 B Bond, without the express written consent of the holders of such Series 1987 A Bond or Series 1987 B Bond, nor reduce the percentage of Series 1987 A Bonds or Series 1987 B Bond, required for consent to any such modification or amendment.

Section 10.02. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the City, the Registrar or the Depository Bank shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

A. The City:

City of Williamstown  
Williamstown, West Virginia 26187  
Attention: Mayor

B. Registrar - As shall be set out in a  
Supplemental Resolution

Any party listed above may change the address given for it at any time upon written notice thereof sent by United States mail, postage prepaid, to the other parties.

Section 10.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Supplemental and Amendatory Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Supplemental and Amendatory Ordinance.

Section 10.04. Table of Contents and Headings. The Table of Contents and headings of the articles and sections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.05. Effective Date. This Supplemental and Amendatory Ordinance shall take effect immediately upon enactment.

ARTICLE XI

REPEAL

Section 11.01. Repeal of Former Ordinance. The Ordinance of the City adopted on second reading on April 7, 1987 entitled "An Ordinance Authorizing the Refunding of the Water and Sewer Revenue Refunding and Improvement Bonds, Series 1955, of the City of Williamstown, West Virginia through the Issuance by the City of Williamstown, West Virginia of Waterworks Refunding Revenue Bonds, Series 1987, in Aggregate Principal Amount of Not More Than \$59,000 and Sewerage System Refunding Revenue Bonds, Series 1987 in the Aggregate Principal Amount of Not More Than \$59,000; Providing for the Rights and Remedies of, and the Security For, the Registered Owners of Such Waterworks Revenue Bonds and Sewerage System Revenue Bonds; Providing for the Severing of the Combined Waterworks and Sewerage System of the City of Williamstown into a Separate Waterworks System of the City of Williamstown and a Separate Sewerage System of the City of Williamstown; Continuing the Sanitary Board and Enacting Other Provision Relating Thereto", is hereby repealed.

EXHIBIT A

[Description of the Project]

The construction of a secondary sewer treatment plant, and the necessary appurtenances thereto, to augment its present primary treatment at Williamstown, Wood County, West Virginia.

4325P

Enacted this 28th day of May, 1987.

THE CITY OF WILLIAMSTOWN

Wm. W. Burtis  
City Clerk of the City of  
Williamstown

Passed on first  
reading May 21, 1987

Passed on second  
reading May 28, 1987

Effective Following  
Public Hearing Held June 8, 1987

{SEAL}

Raymond E. Leach  
Mayor

ATTEST:

Wm. W. Burtis  
City Clerk

4158P



**THE CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS, SERIES 2005 A  
(WEST VIRGINIA SRF PROGRAM)**

**BOND ORDINANCE**

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THE CITY OF WILLIAMSTOWN

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF WILLIAMSTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$400,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 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 Williamstown (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Wood County of said State.

B. The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, betterments and improvements to the existing public sewerage system of the Issuer, consisting of the construction of an ultra-violet disinfection system, together with all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection, transportation, treatment, purification, or disposal of liquid or solid wastes, residential sewage or industrial waste (the existing public sewerage system of the Issuer, the Project and any further additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to permanently finance a portion of the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund Program (the "SRF Program"), which the Authority administers pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 2005 A (West Virginia SRF Program), in the total aggregate principal amount of not more than \$400,000 (the "Series 2005 A Bonds"), initially to be represented by a single bond, to permanently finance a portion of the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the SRF Program; interest, if any, on the Series 2005 A Bonds prior to and during acquisition or construction and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Series 2005 A Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; fees and expenses of the Authority, including the SRF Administrative Fee (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 Series 2005 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the acquisition or construction of the Project and the placing of same in operation; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2005 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

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

F. It is in the best interests of the Issuer that its Series 2005 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), in form satisfactory to the Issuer, the Authority, and the DEP (the "Loan Agreement"), to be approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will rank either on a parity with or junior and subordinate to the Series 2005 A Bonds as to liens, pledge, source of and security for payment, being the Issuer's Sewerage System Revenue Bond, Series 1987 A, dated June 25, 1987, issued in the original aggregate principal amount of \$15,551 (the "Series 1987 A Bonds"), Sewerage System Revenue Bond, Series 1987 B, dated June 25, 1987, issued in the original aggregate principal amount of \$169,539 (the "Series 1987 B Bonds"), and the Sewerage System Revenue Bond, Series 1987 A-1, dated June 25, 1987, issued in the original aggregate principal amount of \$659,637 (the "Series 1987 A-1 Bonds" and collectively the "Prior Bonds").

The Series 2005 A Bonds shall be issued on a parity with the Series 1987 A Bonds and the Series 1987 A-1 Bonds and senior and prior to the Series 1987 B Bonds with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2005 A Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Series 1987 A Bonds and the Series 1987 A-1 Bonds are met; (ii) the written consent of the Holders of the Series 1987 A Bonds and the Series 1987 A-1 Bonds to the issuance of the Series 2005 A Bonds on a parity with the Series 1987 A Bonds and the Series 1987 A-1 Bonds; and (iii) the written consent of the Holders of the Series 1987 B Bonds to the issuance of the Series 2005 A Bonds on a senior and prior basis to the Series 1987 B Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all covenants of the Prior Bonds and Prior Ordinances.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Series 2005 A Bonds and the Prior Bonds and to make all payments into all funds, accounts and other payments provided for herein.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition and construction of the Project and the operation of the System and issuance of the Series 2005 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things and without

limitation, the approval of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and the obtaining of a certificate of public convenience and necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2005 A Bonds or such final order will not be subject to appeal.

J. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Governing Body to issue the Series 2005 A Bonds for the purposes set forth herein.

K. Small Issuer Exemption from Rebate of Excess Investment Earnings to the United States. In accordance with Section 148 (f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that no part of the Notes are private activity bonds; that 95% or more of the Net Proceeds of the Notes are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds) issued by the Issuer during the calendar year in which the Notes are issued does not and will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations from time to time in effect applicable to the Notes. For purposes of the first paragraph of this Section and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this first paragraph of this Section and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this first paragraph of this Section and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefitting thereby shall be treated as one issuer.

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

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2005 A Bonds by those who shall be the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such 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 Series 2005 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series

and any other Bonds of the same series, and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

"Act" means, collectively, Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2005 A Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the DEP under the Act.

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

"Board" means the Sanitary Board of the Issuer.

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

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

"Bond Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

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

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

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

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

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

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

"Completion Date" means the completion date of the Project, as defined in the SRF Regulations.

"Consulting Engineers" means Burgess & Niple, Inc., Parkersburg, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

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

"DEP" means the West Virginia Department of Environmental Protection, or any other agency, board or department of the State that succeeds to the functions of the DEP.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

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

"First Lien Bonds" means, collectively, the Series 1987 A Bonds and the 1987 A-1 Bonds.

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

"Governing Body" means the Council of the Issuer, as it may now or hereafter be constituted.

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

"Grant" means any and all grants received by the Issuer for the payment of a portion of the costs of acquiring and constructing the Project.

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

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

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

"Investment Property" means

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

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

Except as provided in the following sentence, the term "Investment Property" does not include any tax-exempt bond. With respect to an issue other than an issue a part of

which is a specified private activity bond (as defined in section 57(a)(5)(C) of the Code), the term "Investment Property" includes a specified private activity bond (as so defined).

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

"Loan Agreement" means the Loan Agreement heretofore entered into, or to be entered into, by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2005 A Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2005 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2005 A Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2005 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

"Nonpurpose Investment" means any Investment Property as defined in Section 148(b) of the Code, that is not a purpose investment.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the costs, the SRF Administrative Fee, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

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

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

"Paying Agent" means the Commission or other entity or authority designated as such for the Series 2005 A Bonds in the Supplemental Resolution, with the written consent of the Authority and the DEP.

"Prior Bonds" means, collectively, the Issuer's (i) Sewerage System Revenue Bond, Series 1987 A, dated June 25, 1987, issued in the original aggregate principal amount of \$15,551, (ii) Sewerage System Revenue Bond, Series 1987 B, dated June 25, 1987, issued in the original aggregate principal amount of \$169,539, and (iii) Sewerage System Revenue Bond, Series 1987 A-1, dated June 25, 1987, issued in the original aggregate principal amount of \$659,637.

"Prior Ordinances" means, collectively, the ordinances of the Issuer, including all amendments and supplements thereto, authorizing the issuance of the Prior Bonds.

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

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

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

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest

coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

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

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

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

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

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank

of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended; and

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

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

"Registrar" means the Bond Registrar.

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

"Reserve Accounts" means, collectively, the respective reserve account established for the Series 2005 A Bonds and the Prior Bonds.

"Reserve Requirement" means, collectively, the respective amount required to be on deposit in any Reserve Account for the Prior Bonds and the Series 2005 A Bonds.

"Revenue Fund" means the Revenue Fund created by the Prior Ordinances and continued hereby.

"Series 1987 A Bonds" means the Issuer's Sewerage System Revenue Bonds, Series 1987 A, described in Section 1.02G hereof.

"Series 1987 B Bonds" means the Issuer's Sewerage System Revenue Bonds, Series 1987 B, described in Section 1.02G hereof.

"Series 1987 A-1 Bonds" means the Issuer's Sewerage System Revenue Bonds, Series 1987 A-1, described in Section 1.02G hereof.

"Series 2005 A Bonds" means Sewer Revenue Bonds, Series 2005 A (West Virginia SRF Program), of the Issuer, authorized by this Bond Legislation.

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

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

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

"Series 2005 A Bonds Sinking Fund" means the Series 2005 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sewerage System Depreciation Fund" means the Sewerage System Depreciation Fund created by the Prior Ordinances and continued hereby.

"Sinking Funds" means, collectively, the respective sinking fund established for the Prior Bonds and the Series 2005 A Bonds.

"SRF Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement.

"SRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

"SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2005 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2005 A Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligation of the Issuer, including, without limitation, the Sewerage System Depreciation Fund, the Sinking Funds and the Reserve Accounts.

"System" means, collectively, the complete existing municipal sewage treatment and collection system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any and all additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever, both within and without the Issuer.

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

Additional terms and phrases are defined in this Ordinance as they are used. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

## ARTICLE II

### AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project.  
There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed \$400,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2005 A Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the DEP.

The cost of the Project is estimated not to exceed \$400,000, all of which will be obtained from proceeds of the Series 2005 A Bonds.

### ARTICLE III

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

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2005 A Bonds, funding the Series 2005 A Bonds Reserve Account, paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2005 A Bonds of the Issuer. The Series 2005 A Bonds shall be issued as a single bond, designated "Sewer Revenue Bond, Series 2005 A (West Virginia SRF Program)", in the principal amount of not more than \$400,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2005 A Bonds remaining after funding of the Series 2005 A Bonds Reserve Account (if funded from Bond proceeds) and capitalizing interest on the Series 2005 A Bonds, if any, shall be deposited in or credited to the Series 2005 A Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2005 A Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2005 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2005 A Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2005 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2005 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2005 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest, if any, as of the date specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2005 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2005 A Bonds shall cease to be such officer of the Issuer before the Series 2005 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2005 A Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of the authorization of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2005 A Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2005 A Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2005 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2005 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2005 A Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Series 2005 A Bonds.

The registered Series 2005 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2005 A Bonds or transferring the registered Series 2005 A Bonds are exercised, all Series 2005 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2005 A Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2005 A Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 2005 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2005 A Bonds or, in the case of any proposed redemption of Series 2005 A Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2005 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2005 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Holder or Holders of the Series 2005 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2005 A Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Positions with respect to Prior Bonds. The payment of the debt service of all Series 2005 A Bonds shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Series 1987 A Bonds and the Series 1987 A-1 Bonds, and senior and prior to the lien on the Net Revenues in favor of the Holders of the Series 1987 B Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2005 A Bonds and the Prior Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2005 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2005 A Bonds to the original purchasers upon receipt of the documents set forth below:

- A. If other than the Authority, a list of the names in which the Series 2005 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;
- B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2005 A Bonds to the original purchasers;
- C. An executed and certified copy of the Bond Legislation;
- D. An executed copy of the Loan Agreement; and
- E. The unqualified approving opinion of bond counsel on the Series 2005 A Bonds.

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

(FORM OF BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF WILLIAMSTOWN  
SEWER REVENUE BOND, SERIES 2005 A  
(WEST VIRGINIA SRF PROGRAM)

No. AR-\_\_\_\_\_

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

KNOW ALL MEN BY THESE PRESENTS: That on this the \_\_\_ day of \_\_\_\_\_, 2005, THE CITY OF WILLIAMSTOWN, a municipal corporation and political subdivision of the State of West Virginia in Wood County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1,200\_\_\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said EXHIBIT B. The interest and SRF Administrative fee (as defined in the hereinafter describe Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_, 20\_\_\_\_, as set forth on Exhibit B attached hereto.

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

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement (the "Loan

Agreement") by and among the Issuer, the Authority and the DEP, dated \_\_\_\_\_, 2005.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2005, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2005 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S SEWERAGE SYSTEM REVENUE BOND, SERIES 1987 A, DATED JUNE 25, 1987, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$15,551 (THE "SERIES 1987 A BONDS") AND THE ISSUER'S SEWERAGE SYSTEM REVENUE BOND, SERIES 1987 A-1, DATED JUNE 25, 1987, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$659,637 (THE "SERIES 1987 A-1 BONDS"), AND SENIOR AND PRIOR WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S SEWERAGE SYSTEM REVENUE BOND, SERIES 1987 B (THE "SERIES 1987 B BONDS"), DATED JUNE 25, 1987, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$169,539 (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the Holders of the Series 1987 A Bonds and the Series 1987 A-1 Bonds, and senior and prior to the pledge of Net Revenues in favor of the Holders of the Series 1987 B Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2005 A Bonds Reserve Account"), and unexpended proceeds of the 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 monies in the Series 2005 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Bonds, including the Prior Bonds; provided however, that so long as there exists in the Series 2005 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with or junior to the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

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

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

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

IN WITNESS WHEREOF, THE CITY OF WILLIAMSTOWN has caused this Bond to be signed by its Mayor, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated as of the day and year first written above.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

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

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2005 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 2005.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

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

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL            \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2005 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the City Clerk is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, are hereby approved and incorporated into this Bond Legislation.

Section 3.12. "Amended Schedule" Filing. Within 60 days following the Completion Date of the Project, the Issuer will file with the Authority and the DEP a schedule, the form of which will be provided by the DEP, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

## ARTICLE V

### FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

- (1) Revenue Fund (established by the Prior Ordinances);
- (2) Sewerage System Depreciation Fund (established by the Prior Ordinances); and
- (3) Series 2005 A Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

- (1) Series 2005 A Bonds Sinking Fund; and
- (2) Series 2005 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinances and this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation and in the Prior Ordinances. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner order of priority:

- (1) The Issuer shall first, each month, pay from the Revenue Fund all current Operating Expenses of the System.
- (2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the respective Sinking Funds for the Series 1987 A Bonds and the Series 1987 A-1 Bonds the amounts required by the Prior Ordinances to pay interest on such Bonds;

and (ii) commencing 3 months prior to the first date of payment of interest on the Series 2005 A Bonds for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2005 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2005 A Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2005 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission, (i) for deposit in the respective Sinking Funds for the Series 1987 A Bonds and the Series 1987 A-1 Bonds, the amounts required by the Prior Ordinances to pay the principal of the such Bonds; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2005 A Bonds, for deposit in the Series 2005 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2005 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2005 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the respective Reserve Accounts for the Series 1987 A Bonds and the Series 1987 A-1 Bonds, the amounts required by the Prior Ordinances; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2005 A Bonds, if not fully funded upon issuance of the Series 2005 A Bonds, for deposit in the Series 2005 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2005 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2005 A Bonds

Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2005 A Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Sewerage System Depreciation Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinances and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Sewerage System Depreciation Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Sewerage System Depreciation Fund for replacements, repairs, improvements or extensions to the System; provided, (i) that any restrictions on the use of monies in the Prior Ordinances are met; and (ii) that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with monies from the Sewerage System Depreciation Fund.

(6) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 1987 B Bonds Sinking Fund, the amount required by the Prior Ordinances to pay the principal of the Series 1987 B Bonds.

(7) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 1987 B Bonds Reserve Account, the amount required by the Prior Ordinances.

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

All investment earnings on monies in the Series 2005 A Bonds Sinking Fund and the Series 2005 A Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2005 A Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2005 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2005 A Bonds Reserve Account which result in a reduction in the balance of the Series 2005 A Bonds Reserve Account to below the Series 2005 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the priority as set forth above.

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

The Issuer shall not be required to make any further payments into the Series 2005 A Bonds Sinking Fund or into the Series 2005 A Bonds Reserve Account therein when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2005 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 1987 A Bonds, the Series 1987 A-1 Bonds, and the Series 2005 A Bonds, and thereafter, with respect to the Series 1987 B Bonds, all in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2005 A Bonds Sinking Fund and the Series 2005 A Bonds Reserve Account created hereunder, and all required amounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into the Series 2005 A Bonds Sinking Fund and the Series 2005 A Bonds Reserve Account shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

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

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

B. The Issuer shall, on the first day of each month (if the first day is not a business day, then the first business day of each month), deposit with the Commission the required interest, if any, principal and reserve account payments with respect to the Series 2005 A Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. The Issuer shall, on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission, the SRF Administrative Fee as set forth in the Schedule Y attached to the Loan Agreement.

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

D. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority anytime make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

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

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03 and the relevant provisions of the Prior Ordinances, 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 and the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

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

J. All Tap Fees shall be deposited by the Issuer, as received, in the Series 2005 A Bonds Construction Trust 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.

## ARTICLE VI

### BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

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

A. From the proceeds of the Series 2005 A Bonds, there shall first be deposited with the Commission in the Series 2005 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

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

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

D. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2005 A Bonds shall be expended as directed by the DEP.

Section 6.02. Disbursements From the Series 2005 A Bonds Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 2005 A Bonds will be expended and the disbursement procedures of such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2005 A Bonds Construction Trust Fund shall be made only after submission to, and approved from, the Authority and the DEP of the following:

- (1) a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement, in compliance with the construction schedule; and

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

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

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

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

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

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

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2005 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2005 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2005 A Bonds or the interest, if any, thereon is Outstanding and unpaid.

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

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Prior Bonds. The payment of the debt service of the Series 2005 A Bonds shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Series 1987 A Bonds and the Series 1987 A-1 Bonds and senior and prior to the lien on the Net Revenues in favor of the Holders of the Series 1987 B Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on the Prior Bonds and the Series 2005 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved and described in the sewer rate ordinance of the Issuer enacted December 21, 2004, which rates are incorporated herein by reference as a part hereof.

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

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinances. Additionally, so long as the Series 2005 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the DEP, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2005 A Bonds, immediately be remitted to the Commission for deposit in the Series 2005 A Bonds Sinking Fund, 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 of and interest, if any, on the Series 2005 A Bonds. Any balance remaining after the payment of the Bonds and the interest, if any, thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution duly adopted, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Sewerage System Depreciation 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, in writing 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 in accordance with the laws of the State. The proceeds of any such sale shall be remitted by the Issuer to the Commission for deposit in the Sinking Funds for prepayment of the Bonds. The payment of such proceeds into the Sewerage System Depreciation Fund and the Sinking Funds shall not reduce the amounts required to be paid into such funds by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

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

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2005 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2005 A Bonds and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

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

Section 7.07.      Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. Additionally, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2005 A Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the DEP under the conditions and in the manner herein provided (unless less restrictive than the provisions of the Prior Ordinances).

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

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

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

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

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the City Clerk prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the 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 Net Revenues of the System and their source of and security for payment from said Net Revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2005 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2005 A Bonds.

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

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

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

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

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

The Issuer shall file with the Authority and the DEP, or any other original purchaser of the Series 2005 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2005 A Bonds, requesting the same, an annual report containing the following:

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

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

(C) The amount of any Bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a

summary thereof, to any Holder or Holders of the Series 2005 A Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 2005 A Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

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

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

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

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

year for payment of principal of and interest, if any, on the Series 2005 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Series 2005 A Bonds, including the Prior Bonds; provided that, in the event the amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2005 A Bonds Reserve Account and any Reserve Accounts for obligations on a parity with or junior to the Series 2005 A Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2005 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Series 2005 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04 hereof.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the DEP and the Authority within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance within 30 days of adoption to the Authority and the DEP and to any Holder of the Bonds, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the DEP, the Authority and to any Holder of any Bonds, or anyone acting for and in behalf of such Holder of any Bonds.

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

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority and the DEP 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 Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Loan Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all state and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals

or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System, 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. If the water facilities are not owned by the Issuer, the Issuer shall enter into a termination agreement with the water provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2005 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

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

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

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

(4) FLOOD INSURANCE, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

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

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

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

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP and the Issuer shall verify such insurance prior to commencement of construction. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. 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 30-day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17. Completion and Operation of Project; Permits and Orders.

The Issuer shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia and the West Virginia Infrastructure and Jobs Development Council necessary for the acquisition and construction of the Project and the operation of the System and has obtained all approvals for the issuance of the Series 2005 A Bonds required by State law, with all appeal periods having expired without successful appeal.

Section 7.18. Compliance with Loan Agreement and Law.

The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer shall provide the DEP with copies of all documents submitted to the Authority.

The Issuer shall also comply with all applicable laws, rules and regulations issued by the Authority, DEP or other State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.19. Tax Covenants.

The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2005 A Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2005 A Bonds during the term thereof is, under the terms of the Series 2005 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2005 A Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2005 A Bonds during the term thereof is, under the terms of the Series 2005 A Bonds or any underlying

arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2005 A Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2005 A Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

B. **PRIVATE LOAN LIMITATION.** The Issuer shall assure that not in excess of the lesser of 5% or \$5,000,000 of the Net Proceeds of the Series 2005 A Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. **FEDERAL GUARANTEE PROHIBITION.** The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2005 A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. **INFORMATION RETURN.** The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2005 A Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

E. **FURTHER ACTIONS.** The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 2005 A 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, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

Section 7.20. Securities Laws Compliance. The Issuer 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 7.21. Contracts; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2005 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

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

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

## ARTICLE VIII

### INVESTMENT OF FUNDS

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

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

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2005 A Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest on the Series 2005 A Bonds from gross income for federal income tax purposes.

Section 8.02.      Non-Arbitrage. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 2005 A Bonds which would cause the Series 2005 A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2005 A Bonds) so that the interest on the

Series 2005 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Small Issuer Exemption from Rebate. In accordance with Section 148(f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that the Series 2005 A Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the Net Proceeds of the Series 2005 A Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt bonds (other than private activity bonds as defined in Section 141 of the Code) issued by the Issuer during the calendar year in which the Series 2005 A Bonds are issued are not and will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations promulgated thereunder. For purposes of this Section 8.03 and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section 8.03 and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this Section 8.03 and Section 148(f)(4)(D) of the Code to any other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefitting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code and not exempted from such requirements, the Issuer covenants to make, or cause to be made, all rebate calculations, computations and payments in the time, manner and as required in Section 148(f) of the Code and Regulations from time to time in effect and applicable to the Series 2005 A Bonds and otherwise covenants and agrees to comply with the provisions of such Section 148(f) of the Code and Regulations from time to time in effect and applicable to the Series 2005 A Bonds. In the event of a failure to pay the correct rebate amount, the Issuer will pay, from any lawful sources available therefor, to the United States such rebate amount, plus a penalty equal to 50% of the rebate amount not paid when required to be paid, plus interest on that amount, unless waived. The Issuer shall obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary to maintain the exclusion of interest on the Series 2005 A Bonds from gross income for federal income tax purposes. In order to provide for the administration of this paragraph, the Issuer may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Issuer may deem appropriate.

The Issuer shall furnish to the Authority, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority. In addition, the Issuer shall cooperate with the Authority in preparing any required rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation 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 Series 2005 A Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority including information with respect to earnings on all funds constituting "gross proceeds" of the Series 2005 A Bonds (as such term "gross proceeds" is defined in the Code).

## ARTICLE IX

### DEFAULT AND REMEDIES

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

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2005 A Bonds;  
or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2005 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2005 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a 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; or

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 9.02.      Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2005 A Bonds shall be on a parity with the Holders of the Series 1987 A Bonds and the Series 1987 A-1 Bonds and senior and prior to the Holders of the Series 1987 B Bonds.

Section 9.03 Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

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

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project

and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE X

### PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2005 A Bonds, the principal of and interest due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2005 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2005 A Bonds from gross income for federal income tax purposes.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2005 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2005 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2005 A Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2005 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest, if any, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2005 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any 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 exclusion of interest, if any, on the Series 2005 A Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2005 A Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2005 A Bonds.

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

Section 11.05. Conflicting Provisions Repealed. Except for the Prior Ordinances, all ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed; provided

that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

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

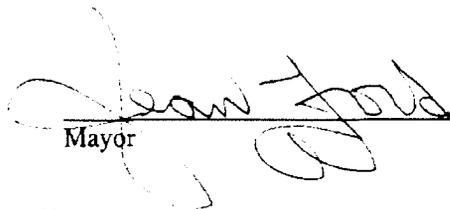
Section 11.07. Effective Date. This Ordinance shall take effect immediately following the public hearing and final reading hereof.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in *The Parkersburg News*, a newspaper of general circulation in The City of Williamstown, there being no newspaper published therein, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2005 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading: - April 19, 2005

Passed on Second Reading: - May 17, 2005

Passed on Final Reading  
Following Public  
Hearing: - May 31, 2005

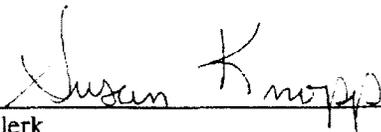
  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of The City of Williamstown on the 31st day of May, 2005.

Dated: June 2, 2005.

[SEAL]

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

05/19/05  
976720.00002

EXHIBIT A

Loan Agreement included in bond transcript as Document 3.

THE CITY OF WILLIAMSTOWN

Sewer Revenue Bonds, Series 2005 A  
(West Virginia SRF Program)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA SRF PROGRAM), OF THE CITY OF WILLIAMSTOWN; APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the council (the "Governing Body") of The City of Williamstown (the "Issuer") has duly and officially adopted and enacted a bond ordinance, effective May 31, 2005 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF WILLIAMSTOWN AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$400,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE

REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds, Series 2005 A (West Virginia SRF Program) (the "Series 2005 A Bonds"), of the Issuer, in an aggregate principal amount not to exceed \$400,000;

WHEREAS, the Bond Ordinance has authorized the execution and delivery of the loan agreement relating to the Series 2005 A Bonds, including all schedules and exhibits attached thereto, by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") (the "Loan Agreement"), all in accordance with Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and in the Bond Ordinance it is provided that the form of the Loan Agreement and the exact principal amount, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

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

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

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewer Revenue Bonds, Series 2005 A (West Virginia SRF Program), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of \$230,282. The Series 2005 A Bonds shall be dated the date of delivery thereof, shall finally mature March 1, 2026, and shall bear interest at the rate of 2% per annum. The principal of and interest on the Series 2005 A Bonds shall be payable quarterly, on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2006, and maturing March 1, 2026, and in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Series 2005 A Bonds. The Series 2005 A Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Series 2005 A Bonds. The Issuer does hereby approve and shall pay the SRF Administrative Fee equal to 1% of the principal amount of the Series 2005 A Bonds set forth in the "Schedule Y" attached to the Loan Agreement.

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 3. The Issuer does hereby authorize, approve, ratify and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the applications to the DEP and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer does hereby appoint and designate The Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond Ordinance and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

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

Section 6. The Issuer does hereby appoint and designate Williamstown National Bank, Williamstown, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 7. Series 2005 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2005 A Bonds Sinking Fund, as capitalized interest.

Section 8. Series 2005 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2005 A Bonds Reserve Account.

Section 9. The balance of the proceeds of the Series 2005 A Bonds shall be deposited in or credited to the Series 2005 A Bond Construction Trust Fund as received from the DEP from time to time for payment of the costs of the Project, including, without limitation, costs of issuance of the Bonds and related costs.

Section 10. The Mayor and the City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about June 2, 2005, to the Authority pursuant to the Loan Agreement.

Section 11. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 12. The Issuer does hereby approve and authorize all contracts relating to the financing, acquisition and construction of the Project.

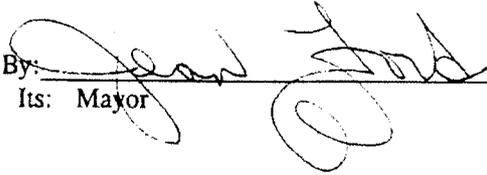
Section 13. The Issuer hereby determines to invest all monies in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and

therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such monies to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer. Monies in the Series 2005 A Bonds Sinking Fund and the Series 2005 A Bonds Reserve Account shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 14. The Issuer hereby approves and accepts all contracts and agreements relating to the financing, acquisition and construction of the Project and hereby authorizes the Sanitary Board to enter into all contracts and agreements relating to the acquisition and construction of the Project.

Section 15. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 31st day of May, 2005.

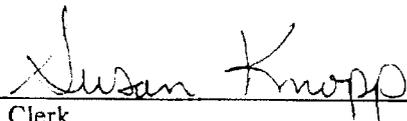
By:   
Its: Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council  
of The City of Williamstown on the 31st day of May, 2005.

Dated: June 2, 2005.

[SEAL]

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

05/19/05  
976720.00002





WEST VIRGINIA  
**Water Development Authority**

Celebrating 34 Years of Service 1974 - 2008

CITY OF WILLIAMSTOWN  
SEWER REVENUE BONDS  
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM)  
AND  
SERIES 2009 B (ARRA PROGRAM)

CONSENT TO ISSUANCE OF PARITY BOND

In reliance upon a certificate of the Issuer's certified public accountant, and the opinion of Goodwin & Goodwin, LLP, as Bond Counsel, stating that the coverage and parity requirements have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the (a) \$15,551 City of Williamstown, Sewer Revenue Bond, Series 1987A, (b) \$169,539 City of Williamstown, Sewer Revenue Bond, Series 1987B, (c) \$659,637 City of Williamstown, Sewer Revenue Bond, Series 1987A1, and (d) \$230,282 City of Williamstown, Sewer Revenue Bond, Series 2005A (collectively, the "Prior Bonds"), hereby consents to the issuance of the City of Williamstown, Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Series 2009 B (ARRA Program) (collectively, the "Series 2009 Bonds"), issued in the original aggregate principal amounts of \$800,000 and \$660,000, under the terms of the Ordinance authorizing the Series 2009 Bonds, on a parity with respect to liens, pledge and source of and security for payment with the Prior Bonds.

WITNESS my signature on this 9<sup>th</sup> day of December, 2009.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By: Careal A. Cummings  
Authorized Representative



**CLOSING MEMORANDUM**

**To:** Carol Cummings  
Rosalie M. Brodersen  
Carrie Grimm  
Susan Knopp  
Samme Gee

**From:** Bill Bragg

**Date:** December 9, 2009

**Re:** City of Williamstown, Sewer Revenue Bonds  
\$800,000 Series 2009 A (West Virginia SRF Program) and  
\$660,000 Series 2009 B (ARRA Program)

---

**1. DISBURSEMENTS TO CITY**

Payor: West Virginia Department of Environmental Protection  
Source: Series 2009 A Bond Proceeds  
Amount: \$102,823.00  
Date: December 9, 2009  
Form: Wire Transfer  
Payee: City of Williamstown  
Bank: Williamstown Bank, Inc.  
435 Highland Avenue  
Williamstown, WV 26187  
(304) 375-6262  
Att'n.: Pete Butcher  
Routing No.: 051503909  
Account No.: 502545  
Account: Series 2009 Construction Trust Fund

Payor: West Virginia Department of Environmental Protection  
Source: Series 2009 B Bond Proceeds  
Amount: \$20,000.00  
Date: December 9, 2009  
Form: Wire Transfer  
Payee: City of Williamstown  
Bank: Williamstown Bank, Inc.  
435 Highland Avenue  
Williamstown, WV 26187  
(304) 375-6262  
Att'n.: Pete Butcher  
Routing No.: 051503909  
Account No.: 502545  
Account: Series 2009 Construction Trust Fund

80000 SERIES  
30% P.C.W.





# CERTIFICATE OF LIABILITY INSURANCE

OP ID#  
WILL-15DATE (MM/DD/YYYY)  
12/08/09

<b>PRODUCER</b>  Commercial Insurance Services 340 MacCorkle Ave. Ste #200 Charleston WV 25314 Phone: 304-345-8000 Fax: 304-345-8014	<b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</b>	
	<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b>  City of Williamstown Susan Knopp 100 W. 5th Street Williamstown WV 26187-1523	INSURER A: Argonaut Great Central Ins. Co INSURER B: INSURER C: INSURER D: INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> LE/PO/EPLI/Fire E GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	PE-4617212-01	10/01/09	10/01/10	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ N/A PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 6,000,000 PRODUCTS - COM/PO/AGG \$ 6,000,000 <b>Emp Ben.</b> 2,000,000
A		<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	PE-4617212-01	10/01/09	10/01/10	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A		<b>EXCESS / UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 0	PE-4617212-01	10/01/09	10/01/10	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$ \$
A		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under SPECIAL PROVISIONS below	PE-4617212-01	10/01/09	10/01/10	WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
		OTHER				

### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder is named as an additional insured as respects improvements at Wastewater Treatment Plant.

## CERTIFICATE HOLDER

WVWDCHA
WV Water Development Authority 180 Association Drive Charleston WV 25311

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE	10 DAYS WRITTEN
	

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.





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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone Number: (304) 926-0495  
Fax Number: (304) 926-0463

Joe Manchin III, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.wvdep.org](http://www.wvdep.org)

January 16, 2009

Jean Ford, Mayor  
City of Williamstown  
110 Williams Ave  
Williamstown, WV 26187

CERTIFIED RETURN RECEIPT REQUESTED

Re: WV/NPDES Permit No. WV0022071  
Modification No. 1

Dear Mayor:

This correspondence shall serve as WV/NPDES Water Pollution Control Permit Modification No. 1, of your existing WV/NPDES Water Pollution Control Permit No. WV0022071 issued the 18<sup>th</sup> day of January 2008.

After review and consideration of the information submitted on, and with, WV/NPDES Water Pollution Control Permit Modification Application No. WV0022071-A, dated March 11, 2008 the subject Permit is hereby modified to incorporate the following data and changes, respectively.

- The maximum daily flow rate has been increased from 500 gpd to 5000 gpd for non-domestic wastewater discharge IU07 (Hino Motors Manufacturing).

Enclosed is Section A.IU07, page 9 of 22. This document shall be incorporated, as appropriate, into your existing WV/NPDES Water Pollution Control Permit WV0022071.

All other terms and conditions of the subject WV/NPDES Water Pollution Control Permit shall remain in effect and unchanged. If you should have any questions, please contact John Lockhart, P.E. of this office at (304) 926-0499 x1028.

Promoting a healthy environment.

Sincerely,



Scott G. Mandirola  
Acting Director

SGM/jl  
Enclosures

cc: Env. Insp. Supv.  
Env. Insp.

**A.IU07 DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS:**

**Final Limitations**

**Year Round**

During the period beginning issue date of modification and lasting through midnight 01/17/2013 the permittee is authorized to accept the discharge from Outlet Number(s) IU07 (Pretreatment - Non Significant Industrial User)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations			Monitoring Requirements					
	Quantity	Units	Other Units	Measurement Frequency	Sample Type	Units			
Flow Rate (Year Round) (ML-4)	N/A	5000 Max. Daily	gpd	N/A	N/A	N/A	1/daily	Estimated	
Total Suspended Solids (Year Round) (ML-4)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	1/quarter	mg/l	Comp
pH (Year Round) (ML-4)	N/A	N/A	N/A	5 Inst. Min.	N/A	10 Inst. Max.	1/quarter	S.U.	Grab
Oil and Grease, Hexane EXTR. (Year Round) (ML-4)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	1/quarter	mg/l	Grab

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):  
Hino Motors - Refer to Sections E.2.a.2 and E.2.b.2 for sampling procedures and requirements.





CITY OF WILLIAMSTOWN, a municipal utility  
OF  
WILLIAMSTOWN, WEST VIRGINIA  
RATES, RULES AND REGULATIONS FOR FURNISHING  
SEWERAGE AND SEWAGE DISPOSAL SERVICE  
at Williamstown, Wood County, West Virginia  
Filed with THE PUBLIC SERVICE COMMISSION  
of  
WEST VIRGINIA

---

Issued August 25, 2009

Effective for service rendered on or after August 21, 2009  
or as otherwise provided herein

---

Adopted by City Council

Issued by CITY OF WILLIAMSTOWN, a municipal utility

By \_\_\_\_\_

\_\_\_\_\_  
Title

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.

APPLICABILITY

Applicable in entire territory served

AVAILABILITY OF SERVICE

Available for sanitary sewer service

(I) RATE

First	2,000 gallons or less	\$14.48 per month
Next	3,000 gallons used per month	\$ 7.23 per 1,000 gallons
Next	20,000 gallons used per month	\$ 5.62 per 1,000 gallons
Next	75,000 gallons used per month	\$ 4.85 per 1,000 gallons
Next	100,000 gallons used per month	\$ 3.98 per 1,000 gallons
All Over	200,000 gallons used per month	\$ 3.23 per 1,000 gallons

(I) MINIMUM CHARGE

\$14.48

(I) CONNECTION FEE

\$409.86

DELAYED PAYMENT PENALTY

The above rates are net. On all accounts not paid in full within twenty (20) days of the billing date, ten percent (10%) will be added to the net amount shown. This delayed payment penalty is not interest and is to only be collected once for each bill where it is appropriate.

(I) Indicates increase



**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]  
**William K. Bragg, Jr. (304) 346-7000**

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

William K. Bragg, Jr.  
 Goodwin & Goodwin, LLP  
 300 Summers Street, Suite 1500  
 Charleston, WV 25301-1678

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME -- insert only one debtor name (1a or 1b) -- do not abbreviate or combine names

1a. ORGANIZATION'S NAME  
**City of Williamstown**

OR  
 1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**100 W. 5th Street Williamstown WV 26187 USA**

1d. TAX ID #, SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any X NONE  
**55-6000276 Municipality West Virginia**

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME -- insert only one debtor name (2a or 2b) -- do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR  
 2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #, SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any  NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) -- insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME  
**West Virginia Water Development Authority, for the benefit of the Department of Environmental Protection**

OR  
 3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**180 Association Drive Charleston WV 25311-1571 USA**

4. This FINANCING STATEMENT covers the following collateral:

Statutory mortgage lien on accounts, revenues, sewer system and other property as provided by Bond Ordinance authorizing the issuance of \$800,000 City of Williamstown, Sewer Revenue Bond, Series 2009 A (West Virginia SRF Program), 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-finance transaction of the City of Williamstown, Wood County, West Virginia. Pursuant to the provisions of Section 46-9-515(b) of the Code of West Virginia of 1931, as amended, this financing statement shall be effective for a period of forty (40) years from its date of filing, unless the underlying debt is repaid sooner.

5. ALTERNATIVE DESIGNATION [if applicable]:  LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAILOB  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed [for record](or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) (optional)  All Debtors  Debtor 1  Debtor 2

8. OPTIONAL FILER REFERENCE DATA

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]  
 William K. Bragg, Jr. (304) 346-7000

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

William K. Bragg, Jr.  
 Goodwin & Goodwin, LLP  
 300 Summers Street, Suite 1500  
 Charleston, WV 25301-1678

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME City of Williamstown					
O R	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
	1c. MAILING ADDRESS 100 W. 5th Street		CITY Williamstown	STATE WV	POSTAL CODE 26187
1d. TAX ID #: SSN OR EIN 55-6000276	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION Municipality	1f. JURISDICTION OF ORGANIZATION West Virginia	1g. ORGANIZATIONAL ID #, if any <input checked="" type="checkbox"/> NONE	

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME					
O R	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
	2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE	

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME West Virginia Water Development Authority, for the benefit of the Department of Environmental Protection					
O R	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
	3c. MAILING ADDRESS 180 Association Drive		CITY Charleston	STATE WV	POSTAL CODE 25311-1571

4. This FINANCING STATEMENT covers the following collateral:

Statutory mortgage lien on accounts, revenues, sewer system and other property as provided by Bond Ordinance authorizing the issuance of \$660,000 City of Williamstown, Sewer Revenue Bond, Series 2009 B (ARRA Program), 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-finance transaction of the City of Williamstown, Wood County, West Virginia. Pursuant to the provisions of Section 46-9-515(b) of the Code of West Virginia of 1931, as amended, this financing statement shall be effective for a period of forty (40) years from its date of filing, unless the underlying debt is repaid sooner.

5. ALTERNATIVE DESIGNATION [if applicable]:  LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAILOR  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed [for record](or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional]  All Debtors  Debtor 1  Debtor 2

8. OPTIONAL FILER REFERENCE DATA



**ARTICLE 13**  
**SEWAGE WORKS OF MUNICIPAL CORPORATIONS**  
**AND SANITARY DISTRICTS**

<b>Section</b>	
16-13-1.	Acquisition, operation, etc., of works; acquisition of property; issue bonds.
16-13-2.	Sanitary board to supervise and control construction, etc., of appointment of board; definitions.
16-13-3.	Powers of sanitary board; contracts; employees; compensation for extensions and improvements; replacement of damaged public
16-13-4.	Payment of preliminary expenses of surveys, etc.
16-13-5.	Ordinance necessary before acquisition or construction of works.
16-13-6.	Publication and hearing upon ordinance.
16-13-7.	Acquisition by condemnation or purchase.
16-13-8.	Cost of works.
16-13-9.	Contracts and obligations incurred to be paid for solely by revenue
16-13-10.	Interest on and redemption of bonds; form; statement on face of negotiability; exemption from taxation; registration; execution; disposition of surplus proceeds; additional and temporary bonds.
16-13-11.	Additional bonds to extend or improve works.
16-13-12.	Additional bonds for extension, etc., of works to have equal priority with original bonds.
16-13-13.	Application of revenue from bonds; lien.
16-13-14.	Securing bonds by trust indenture.
16-13-15.	Sinking fund; transfer of balance of net revenues.
16-13-16.	Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or re-estab-lishment; hearing; lien and recovery; discontinuance of services.
16-13-17.	Government units subject to established rates.
16-13-18.	Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members.
16-13-18a.	Publication of financial statement.
16-13-19.	Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers.
16-13-20.	Discharge of lien on property acquired.
16-13-21.	Action on certificates or attached coupons; receivers.
16-13-22.	Powers conferred in addition to existing powers; jurisdiction outside corporate limits.
16-13-22a.	Grants, loans and advances.
16-13-22b.	Contracts for abatement of pollution.
16-13-22c.	Refunding bonds.
16-13-22d.	Subordination of bonds.
16-13-22e.	Operating contract.
16-13-22f.	Exemption of bonds from taxation.
16-13-22g.	Covenants with bondholders.
16-13-23.	Article deemed full authority for construction, etc., of works and is subject to bonds; alternative method; powers of state department of health if not affected.
16-13-23a.	Additional powers of municipality upon receipt of order to cease pollution.
16-13-24.	Article to be construed liberally.

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

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

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

(2) A stormwater collection system and control system, including all lines, pumping stations and all other facilities and appurtenances necessary or useful and convenient for the collection and control of stormwater, and an associated stormwater management program.

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

(c) Any municipality may serve and supply the facilities of such sewerage system and a stormwater system and associated stormwater management program within the corporate limits of the municipality and within the area extending twenty miles beyond the corporate limits of such municipality: Provided, however, That the municipality may not serve or supply the facilities of such sewerage system or stormwater system within the corporate limits of any other municipality without the consent of the governing body thereof: Provided, That for stormwater systems, within the twenty miles beyond the municipality's corporate limits the only areas the municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

(d) No obligations shall be incurred by any municipality and/or sanitary district in construction or acquisition except such as is payable solely from the funds provided under the authority of this article.

(e) No municipal corporation or sanitary district may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system, which includes highways, road and drainage easements, and/or stormwater facilities constructed,

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gan, and, therefore, repayment of such advance-  
ments from proceeds of future revenue bond  
issues could not be held unlawful on ground  
that such payment would impair bondholders'  
security. Code W.Va. 16-13-16, 16-13-18,  
16-13-22, 16-13-32; War Mobilization and Re-  
conversion Act of 1944, § 101 et seq., 58 Stat.  
785. U.S. v. City of Charleston, 1957, 149  
F.Supp. 866. Municipal Corporations ≈  
950(15)

In action to cancel certain sewer revenue  
bonds issued by West Virginia City and to en-  
join collection of sewerage service charges as-  
sessed for the purpose of liquidating such  
bonds, District Court was bound by decisions of  
Supreme Court of Appeals of West Virginia up-  
holding the constitutionality of statute permit-  
ting municipalities to issue bonds for self-liqui-  
dating municipal projects. Laws W.Va.1933,  
1st Ex.Sess., c. 25, as amended by Laws W.Va.  
1933, 2nd Ex.Sess., c. 48. Stevenson v. City of  
Bluefield, 1941, 39 F.Supp. 462. Federal  
Courts ≈ 433

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

**5. Public improvements**

Under contract between municipal sanitary  
board and contractor requiring contractor to  
bear cost and expense of damage to surface,  
overhead or subsurface structures in construc-  
tion of sanitary sewer system, contractor was

liable to water company for expense of removal  
of all water and other pipes under streets which  
interfered with construction of sewer system.  
Code, 16-13-1 et seq., 16-13-17, 16-13-24.  
West Virginia Water Service Co. v. Cunning-  
ham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Mu-  
nicipal Corporations ≈ 400

**6. Power to incur indebtedness and expendi-  
tures**

Obligations incurred by city under authority  
of West Virginia statute authorizing municipali-  
ties to construct sewage collection systems and  
sewage treatment plants and to issue revenue  
bonds to pay the cost thereof are not "debts"  
within provision of West Virginia Constitution  
containing limitations on power of a municipali-  
ty to incur debts. Code W.Va. 11-8-26(1-4);  
16-13-15, 16-13-16, 16-13-18, 16-13-19,  
16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8.  
U.S. v. City of Charleston, 1957, 149 F.Supp.  
866. Municipal Corporations ≈ 864(3)

**7. Jurisdiction**

Taxpayers of a city seeking to enjoin collec-  
tion by city of sewerage service charges as-  
sessed for purpose of liquidating bonds issued  
for construction of sewerage system could not  
invoke jurisdiction of federal court on ground  
that by reason of prior decisions of state court  
upholding validity of statute, under which bonds  
were issued and rates assessed, plaintiffs did not  
have a plain, speedy and efficient remedy in  
state court within meaning of Judicial Code.  
Laws W.Va.1933, 1st Ex.Sess., c. 25, as amend-  
ed by Laws W.Va.1933, 2nd Ex.Sess., c. 48;  
Jud.Code, § 24(1), 28 U.S.C.A. § 1312. Steven-  
son v. City of Bluefield, 1941, 39 F.Supp. 462.  
Federal Courts ≈ 7; Federal Courts ≈ 26.1

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

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

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

(1) "Board" means the sanitary board as set up in section eighteen of this  
article.

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

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

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

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

(6) "Stormwater management program" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater works, including, but not limited to, public education, stormwater control, and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state or federal law: Provided, That, as used in this article, "stormwater management program" shall not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

(7) "Works" means sewage works and stormwater works either separately or collectively.

Acts 1933, Ex. Sess., c. 25, § 2; Acts 2001, c. 212, eff. 90 days after April 14, 2002

**Library References**

- Health ☞ 369.
- Municipal Corporations ☞ 711.
- Westlaw Topic Nos. 198H, 268.
- C.J.S. Health and Environment §§ 7 to 17, 26 to 27, 44 to 45, 98 to 100.
- C.J.S. Municipal Corporations § 1535

**Notes of Decisions**

- Construction and application** 1
- Construction of sewer systems** 3
- Public utilities** 2
- Commission, 1964, 137 S.E.2d 426, 147 S.E.2d 776. Statutes ☞ 223.2(21)

**2. Public utilities**

1. **Construction and application**  
 Statutes dealing with municipally owned and operated sewer systems should be read and construed together. Code, 8-4-20, 16-13-1, 16-13-2, 16-13-16, 24-1-1 et seq., 24-2-1 et seq., 24-3-1 et seq. Delardas v. Morgantown Water

All contracts made by a utility relating to public service must be deemed to be made into in contemplation of the exercise of the state of its regulatory power whenever the public interest may make it necessary. County Public Service Sewer Dist. v. A

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ginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Public Utilities ⇌ 115

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer services, and power of Commission to supervise and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code, 16-13-1 et seq., 16-13-2, 16-13-3, 16-13-5, 16-13-16, 16-13-18, 16-13-23, 24-1-1, 24-2-1, 24-3-1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ⇌ 113

3. Construction of sewer systems

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not "debts" within provision of West Virginia Constitution containing limitations on power of a municipality to incur debts. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇌ 864(3)

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇌ 950(15)

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

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

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

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

After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may consider expedient, if funds therefor be

available or are made available as provided in this article, and shall establish rules and regulations for the use and operation of the works, and of sewers, stormwater conduits, and drains connected therewith so far as may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof, including, but not limited to, those activities necessary to comply with all federal and state requirements including stormwater and surface runoff water quality improvement act.

The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and shall be exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for the expenses. All public ways or public places 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.

Acts 1933, Ex. Sess., c. 25, § 3; Acts 1989, c. 133; Acts 2001, c. 143, eff. 90 days after April 11, 2001; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Historical and Statutory Notes

Acts 2001, c. 143, also amended this section to read:

"The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing of the acquisition or construction of any such works, or any trust indenture as 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 ten thousand dollars, shall be made without advertising for bids, which bids shall be publicly opened and award made to the lowest bidder, with power in the board to reject all bids. After the construction, installation and completion of the works, or the acceptance thereof, the board shall operate, maintain and control the same and may order and make any extensions, betterments and improvements to and to the works that the board may deem expedient, if funds therefor be available. All such funds made available as provided in this article shall be used to establish rules and regulations for the use and operation of the works, and of other sewers and drains connected therewith so far as 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 the expenses. All public ways or public places 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.

#### Library References

Health ☞ 369.  
Westlaw Topic No. 198H.

C.J.S. Health and Environment §§ 7  
to 17, 26 to 27, 44 to 45, 98 to 100.

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# MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS

## § 16-13-4

### Notes of Decisions

Independent contractor 3  
Police power of local authorities 1  
Validity of municipal contracts 2

city by statute. Code, 16-13-1 et seq. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Health ⇌ 358; Health ⇌ 369

#### 1. Police power of local authorities

Under the police power of the State, the Legislature has the power to provide for the protection of the safety, health, morals and general welfare of the public, and may delegate such powers to municipalities created by it. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Constitutional Law ⇌ 2437; Constitutional Law ⇌ 1066

Under statute delegating to municipal corporations power by ordinance to create sanitary boards and authorizing such boards to enter into contracts for construction of sewerage systems, ordinance creating sanitary board and authorizing such board to enter into contract for construction of sewerage system was valid exercise of police power of state delegated to

#### 2. Validity of municipal contracts

Contract between municipal sanitary board and contractor providing for construction of sanitary sewerage system in furtherance of exercise of police power of state and provisions of city ordinance was valid. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ⇌ 339(1)

#### 3. Independent contractor

Where city had no right of control over contractor and sanitary board in construction of sanitary sewer system, contractor was "independent contractor". West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ⇌ 400

### § 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.

Acts 1933, Ex. Sess., c. 25, § 4.

**Library References**

Municipal Corporations ⇨288.  
 Westlaw Topic No. 268.  
 C.J.S. Municipal Corporations § 969.

**Notes of Decisions**

**Construction planning expenses 2**  
**Power to incur indebtedness and expenditures 1**

**1. Power to incur indebtedness and expenditures**

West Virginia municipalities are authorized to incur obligations for purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from proceeds of revenue bonds, not from tax levies. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 864(3)

**2. Construction planning expenses**

Plan of preparation expense in construction of municipal sewage treatment and disposal system constituted one of first items of expense incurred and constituted a liability, according to agreements between municipality and Federal Works Agency which advanced money to meet such expense, from moment construction began, and, therefore, repayment of such advancements from proceeds of future revenue bond issues could not be held unlawful on ground that such payment would impair bondholders' security. Code W.Va. 16-13-16, 16-13-18, 16-13-22, 16-13-32; War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 950(15)

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue

bonds to pay cost thereof, money for preliminary engineering work prior to beginning of construction of sewage collection system is not required to be handled by board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for plan preparation for construction of proposed sewage treatment and disposal system not be entitled to general judgment against but would be entitled to an order for repayment from existing or future revenue proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨

In agreement between West Virginia and Federal Works Administrator for advances used for purpose of plan preparation for construction of proposed sewage treatment and disposal system, parties would be presumed to know extent of city's authority to make such agreement in such respect, and, the limitation imposed by West Virginia law would be read into the agreement. War Mobilization and Reconversion Act of 1944, § 101 et seq., 501, 58 Stat. 785, 791; Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 250

**§ 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 the 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

cost of the works; and (e) contain such other provisions as may be necessary in the premises.

Acts 1933, Ex. Sess., c. 25, § 5.

**Library References**

- Municipal Corporations ¶293.
- Westlaw Topic No. 268.
- C.J.S. Municipal Corporations §§ 977 to 978.

**Notes of Decisions**

**Power to incur indebtedness and expenditures**

**1. Power to incur indebtedness and expenditures**

West Virginia municipalities are authorized to incur obligations for purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from proceeds of revenue bonds, not from tax levies. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ¶ 864(3)

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed

sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ¶ 1037

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ¶ 950(15)

**§ 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, 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.

Acts 1933, Ex. Sess., c. 25, § 6; Acts 1967, c. 105; Acts 1981, 1st Ex. Sess., c. 2.

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**Library References**

Municipal Corporations ⇐294 to 300.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 979 to  
988 to 1001.

**§ 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 had and pursuant to the provisions of chapter fifty-four, of the Code of 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 case pay for any property condemned or purchased, except from the funds provided pursuant to this article; and in any proceedings to condemn, such orders shall 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 from 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 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 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 such works and as a part of the cost thereof.

Acts 1933, Ex. Sess., c. 25, § 7.

**Library References**

Municipal Corporations ⇐287.  
Westlaw Topic No. 268.

**§ 16-13-8. Cost of works**

The cost of the works shall be deemed to include the cost of acquisition and construction thereof, the cost of all property, rights, easements, and franchises deemed necessary or convenient therefor and for the improvements deter

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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.

Acts 1933, Ex. Sess., c. 25, § 8.

**Library References**

- Municipal Corporations ⇄ 288.
- Westlaw Topic No. 268.
- C.J.S. Municipal Corporations § 969.

**Notes of Decisions**

**Monetary advances 2**  
**Preliminary expenditures 1**

**1. Preliminary expenditures**

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ⇄ 369

**2. Monetary advances**

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city

but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇄ 1037

Plan of preparation expense in construction of municipal sewage treatment and disposal system constituted one of first items of expense incurred and constituted a liability, according to agreements between municipality and Federal Works Agency which advanced money to meet such expense, from moment construction began, and, therefore, repayment of such advancements from proceeds of future revenue bond issues could not be held unlawful on ground that such payment would impair bondholders' security. Code W.Va. 16-13-16, 16-13-18, 16-13-22, 16-13-32; War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇄ 950(15)

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

Nothing in this article contained shall be so construed as to authorize or permit any municipality to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely from the funds provided under this article. Funds for the payment of the entire cost of any of the works referred to in this article, exclusive of any portions of the cost that may be defrayed out of any grant or contribution, shall be provided by the issuance of revenue bonds of the municipality, the principal and interest of which shall be

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payable solely from the fund herein provided for the payment, and the may not, in any respect, be a corporate indebtedness of the municipality, the meaning of any statutory or constitutional limitations thereon. details of the bonds shall be determined by ordinance or ordinances municipality.

Acts 1933, Ex. Sess., c. 25, § 9; Acts 1949, c. 93; Acts 2001, c. 212, eff. 90 da April 14, 2001.

**Library References**

Municipal Corporations ⇨ 870, 911, 950(15).  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§  
1579, 1581, 1647 to 1649, 1708

**Notes of Decisions**

- Power of municipal corporations to contract 2**
- Power to incur indebtedness and expenditures 3**
- Preliminary expenditures 4**
- Preliminary proceedings and ordinances 5**
- Validity 1**

**1. Validity**

Statute authorizing municipalities to construct and finance self-liquidating sewer systems held constitutional (Acts 1933 [1st Ex.Sess.] c. 25). *Brewer v. City of Point Pleasant*, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ⇨ 266

**2. Power of municipal corporations to contract**

Under provisions of statute relating to contract with other municipalities for service of sewage works, city which ordered construction of sewage disposal plant was authorized to contract with town to provide that town would have the right to use part of the capacity of the plant in return for contributing to its cost and town was authorized to enter into such contracts with city for the use of the plant, and fact that town was unable to sell revenue bonds because it was not allowed to have part ownership in the plant or in the interceptor sewers did not mean that town was not liable for payments agreed to under the contracts, where city offered to buy the revenue bonds issued by the town. Code, 16-13-9, 16-13-19, 16-13-23a. *City of Morgantown v. Town of Star City*, 1973, 195 S.E.2d 166, 156 W.Va. 529. Municipal Corporations ⇨ 277

**3. Power to incur indebtedness and expenditures**

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not "debts" within provision of West Virginia Constitution

containing limitations on power of a mty to incur debts. Code W.Va. 11-8-16-13-15, 16-13-16, 16-13-18, 16-13-22, 16-13-27, 16-13-32; Const. art. U.S. v. City of Charleston, 1957, 149 866. Municipal Corporations ⇨ 864(3)

West Virginia municipalities are auth incur obligations for purpose of defra liminary expenses of sewer projects, repayment of such obligations is to solely from proceeds of revenue bonds, tax levies. Code W.Va. 11-8-26(1-4); 16-13-16, 16-13-18, 16-13-19, 16-13-27, 16-13-32; Const. art. 10, § 8 *City of Charleston*, 1957, 149 F.Supp. Municipal Corporations ⇨ 864(3)

If sewer project is undertaken by mty, whatever loans may have been mad of the revenue bonds as authorized un Virginia law would or should be inc cost of the works and repaid out of pr the bonds. Code W.Va. 11-8-26(1-4); 16-13-16, 16-13-18, 16-13-19, 16-13-27, 16-13-32; Const. art. 10, § 8 *City of Charleston*, 1957, 149 F.Supp. Municipal Corporations ⇨ 950(15)

Where statute authorizing municip issue bonds for self-liquidating municjct, provided that bonds should not rate indebtedness, bonds held not "debts" within constitutional inhibit 1933 [1st Ex.Sess.] c. 25, §§ 9, 10, *Brewer v. City of Point Pleasant*, 1934, 171, 114 W.Va. 572. Municipal Cor ⇨ 907

Provisions of statute relating to is municipal bonds constitute integral bonds regardless of whether include (Acts 1933 [1st Ex.Sess.] c. 25, §§ 9, 10 *Brewer v. City of Point Pleasant*, 1934 717, 114 W.Va. 572. Municipal Cor ⇨ 923

Statute permitting municipalities bonds for self-liquidating municipa held legitimate delegation of legislati

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Acts 1933, 1st Ex.Sess., c. 25. Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Constitutional Law ⇌ 2437; Municipal Corporations ⇌ 907

4. Preliminary expenditures

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance

of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ⇌ 369

5. Preliminary proceedings and ordinances

Provision of sewer ordinance declaring that statutory mortgage lien should exist in favor of bondholders violated statute permitting municipalities to construct self-liquidating sewer systems, but declaration could be regarded as surplusage and did not affect validity of remainder of ordinance (Acts 1933 [1st Ex.Sess.] c. 25). Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ⇌ 303(4)

§ 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 percent 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 in like manner be issued to provide the amount of such deficit and, as otherwise provided in said ordinance authorizing the issuance of the bonds 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 provisions, exchangeable for definitive bonds upon the issuance of the latter.

Acts 1933, Ex. Sess., c. 25, § 10; Acts 1970, c. 11; Acts 1980, c. 33; Acts 1981, Ex. Sess., c. 2.

**Library References**

Municipal Corporations §§ 922, 950(15).  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1686, 1697, 1708 to 1709.

**§ 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 municipality equally with all other bonds issued pursuant to said ordinance without preference or distinction between any one bond and any other definite bond issued prior to the issuance of the latter.

Acts 1933, Ex. Sess., c. 25, § 11.

**Library References**

Municipal Corporations §§ 911, 950(15).  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1649, 1708 to 1709.

**§ 16-13-12. Additional bonds for extension, etc., of works to have 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 municipality 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 the priority of issuance or otherwise.

Acts 1933, Ex. Sess., c. 25, § 12.

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MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS § 16-13-14

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Library References

Municipal Corporations ¶911, 950(15). C.J.S. Municipal Corporations §§ 1647 to Westlaw Topic No. 268. 1649, 1708 to 1709.

§ 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 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. Acts 1933, Ex. Sess., c. 25, § 13.

Library References

Municipal Corporations ¶911, 950(15). C.J.S. Municipal Corporations §§ 1647 to Westlaw Topic No. 268. 1649, 1708 to 1709.

Notes of Decisions

Preliminary expenditures 1  
Repayment of loans 2

1. Preliminary expenditures  
Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ¶ 369

2. Repayment of loans  
If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West

Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ¶ 950(15)

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ¶ 1037

§ 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, guarding and application of all moneys, and may provide that the works 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 the 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 the 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 the officer, board or depository as it may determine for the custody thereof, and the method of disbursement thereof, with such safeguards and restrictions as it may determine.

Acts 1933, Ex. Sess., c. 25, § 14.

**Library References**

Municipal Corporations ¶911, 950(15).  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 16  
1649, 1708 to 1709.

**United States Code Annotated**

Trust Indenture Act of 1939, see 15 U.S.C.A. § 77aaa et seq.

**§ 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 ordinance create a sinking fund, to be remitted to and administered by the 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 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 net revenues of the works remaining after the payment of the reasonable expenses of operation, repair and maintenance, such amount to be paid by the board into the said sinking fund at intervals to be determined by ordinance prior to the issuance of the bonds, for: (a) The interest upon such bonds as such interest shall become due; (b) the necessary fiscal agency charges for paying bonds and interest as they fall due, or, if all bonds mature at one time, for the payment of the bonds as they fall due, or, if all bonds mature at one time, for the proper maintenance of a sinking fund in such amounts as are necessary to provide a sufficient margin for safety at the time of the payment thereof at such time; (d) a margin for safety at the time of the payment of premiums upon bonds retired by call or purchase as provided, which margin, together with any unused surplus of such moneys carried forward from the preceding year, shall equal ten percent of all 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

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.

Acts 1933, Ex. Sess., c. 25, § 15; Acts 1933, 2nd Ex. Sess., c. 48; Acts 1986, c. 118.

#### Library References

Municipal Corporations ☞951.  
Westlaw Topic No. 268.

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

#### § 16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjustment; hearing; lien and recovery; discontinuance of services

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

(a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality, or that in any way uses or is served by such works.

(b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate, or building that in any way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

(c) The governing body may change and readjust such rates, fees or charges from time to time. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements and/or storm-

water facilities constructed, owned and/or operated by the West Virginia division of highways.

(d) All new applicants for service shall indicate to the governing body whether they are an owner or tenant with respect to the service location.

(e) The governing body may collect from all new applicants for service a deposit of fifty dollars or two twelfths of the average annual usage of applicant's specific customer class, whichever is greater, to secure the payment of service rates, fees and charges in the event they become delinquent provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnecting or reinstatement of service may be made by the governing body until another deposit equal to fifty dollars or a deposit equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the governing body. After two months of prompt payment history, the governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as prescribed by the public service commission: *Provided*, That where the customer is a tenant, the governing body is not required to return the deposit until the tenant discontinues service with the governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of services and facilities provided is delinquent and the user is liable at law for all rates, fees and charges are fully paid. The governing body may, under reasonable rules promulgated by the public service commission, shut off or discontinue water services to a delinquent user of sewer facilities ten days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments.

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

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

(h) After introduction of the ordinance fixing such rates, fees or charges, before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates, fees or charges, shall be given by publication as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. The first publication shall be made at least ten days before the date fixed in such notice for the hearing.

(i) After such hearing, which may be adjourned from time to time, the ordinance establishing rates, fees or charges, either as originally introduced

MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS § 16-13-16

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

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

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

(l) Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of twenty days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities shall be delinquent until such time as all rates, fees and charges are fully paid. When any payment for rates, rentals, fees or charges becomes delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

(m) The board collecting such rates, fees or charges shall be obligated under reasonable rules to shut off and discontinue both water and sewer services to all delinquent users of either water facilities, or sewer facilities or both, and shall not restore either water facilities or sewer facilities, to any delinquent user of either until all delinquent rates, fees or charges for both water facilities, and sewer facilities, including reasonable interest and penalty charges, have been paid in full.

Acts 1933, Ex. Sess., c. 25, § 16; Acts 1933, 2nd Ex. Sess., c. 48; Acts 1959, c. 125; Acts 1967, c. 105; Acts 2001, c. 212, eff. 90 days after April 14, 2001; Acts 2004, c. 185, eff. 90 days after March 12, 2004.

Library References

- Municipal Corporations ¶712.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 1535.

## Notes of Decisions

Construction and application	1
Public utilities	3
Rates and charges for service	2
Summary judgment	5
Water service termination	4

## 1. Construction and application

Statutes dealing with municipally owned and operated sewer systems should be read and construed together. Code, 8-4-20, 16-13-1, 16-13-2, 16-13-16, 24-1-1 et seq., 24-2-1 et seq., 24-3-1 et seq. *Delardas v. Morgantown Water Commission*, 1964, 137 S.E.2d 426, 148 W.Va. 776. Statutes ⇌ 223.2(21)

## 2. Rates and charges for service

If rates and charges set forth in ordinance and established by public service commission by its order should be considered improper for any valid reason, they may be challenged by any user of sewer services by complaint in proper proceeding before public service commission. Code, 8-4-20, 16-13-1, 16-13-2, 16-13-16, 24-1-1 et seq. *Delardas v. Morgantown Water Commission*, 1964, 137 S.E.2d 426, 148 W.Va. 776. *Municipal Corporations* ⇌ 712(8)

Where charges for use of sewer by sanitary board of city of Beckley were assessed to property owners according to quantity of water supplied subject to deduction of amount of water retained on premises to be determined by a meter installed by consumers and allowing deduction of costs thereof from amounts due on bills, such charges were not discriminatory, notwithstanding some users were financially unable to install meters. Code 16-13-30. *Houchins v. City of Beckley*, 1944, 32 S.E.2d 286, 127 W.Va. 306. *Municipal Corporations* ⇌ 712(7)

Party aggrieved by rates established for use of sewer could not resort to courts for relief, where he failed to exercise statutory remedy of appearing before governing body of municipality at public hearing (Acts 1933 [1st Ex.Sess.] c. 25). *Brewer v. City of Point Pleasant*, 1934, 172 S.E. 717, 114 W.Va. 572. *Municipal Corporations* ⇌ 712(8)

## 3. Public utilities

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to super-

vised or regulate municipal sewer system hear proceeding seeking extension of services, and power of Commission to sue and regulate sewer system was not with or impaired by statutes authorizing municipality corporation to own, construct and maintain sewer system under control of a Sanitary and authorizing Board to operate and such systems and to order and complete extensions that Board might deem expedient. Code, 16-13-1 et seq., 16-13-2, 16-13-5, 16-13-16, 16-13-18, 16-24-1-1, 24-2-1, 24-3-1. *State ex rel. Wheeling v. Renick*, 1960, 116 S.E.2d 7 W.Va. 640. *Public Utilities* ⇌ 113

## 4. Water service termination

Any impairment of sewer revenue by suit by cities providing for imposition against property for unpaid sewer charges, statutory amendment precluding cities from attaching lien to landlord's property for failure to pay sewer charges, was not "substantial impairment" and, thus, amendment violated constitutional prohibition against impairment of contracts, where bond contracts acknowledged that parties' rights were to legislative regulation, contracts were modified, abridged right was not central to parties' undertaking, and prior legislation provided for utilities with far more effective remedy of service termination for unpaid sewer charges. U.S.C.A. Const. Art. 1, § 10, cl. 1; W.Va. §§ 8-18-23, 16-13-16. *City of Charles Public Service Commission v. West Virginia*, 1973, 20 F.3d 385, certiorari denied 116 S.Ct. 4 U.S. 974, 133 L.Ed.2d 404. *Constitutions* ⇌ 2704; *Municipal Corporations* ⇌

## 5. Summary judgment

Allegation, in city's notice of motion for summary judgment, that claim was for services of city sewer system and penalty for nonpayment to sanitary board for a specified period of time as to defendant was owner of property served, specified sum was due by reason of a statute and ordinance, when read in connection with itemized statement accompanying affidavit was insufficient to state a claim based on contract in absence of showing of reliance of sanitary board to sewage system, municipality service and right of sanitary board to charge for service, and demurrer to notice was sustained. Code 1937, 16-13-15 et seq. *Beckley v. Craighead*, 1943, 24 S.E.2d 184 W.Va. 484. *Judgment* ⇌ 184

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

The municipality and any county government, state government and federal government served by the services of the works shall be subject to the

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fees, charges and rates established as provided in this article, or to fees, charges and rates established in harmony therewith, for service rendered the municipality, county, state or federal government and shall pay such rates, fees or charges when due from corporate funds and the same shall be considered to be a part of the revenues of the works as herein defined, and be applied as herein provided for the application of the revenues. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

Acts 1933, Ex. Sess., c. 25, § 17; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

- Municipal Corporations ¶712.
- Westlaw Topic No. 268.
- C.J.S. Municipal Corporations § 1535.

Notes of Decisions

In general 1

1. In general

Under contract between municipal sanitary board and contractor requiring contractor to bear cost and expense of damage to surface, overhead or subsurface structures in construc-

tion of sanitary sewer system, contractor was liable to water company for expense of removal of all water and other pipes under streets which interfered with construction of sewer system. Code, 16-13-1 et seq., 16-13-17, 16-13-24. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ¶ 400

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

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

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

During the construction period, one of the members must be a registered professional engineer. The engineer member of the board need not be a resident of said municipality. After the construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer. No officer or employee of the municipality, whether holding a paid or unpaid office, shall be eligible to appointment on said sanitary board until at least one year after the expiration of the term of his or her public office. The appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each term and each succeeding term,

an appointment of a successor shall be made in like manner for a term of 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 is required by ordinance. The mayor or city manager shall act as chairman of the sanitary board, which shall elect a vice chairman from its members and shall designate a secretary and treasurer (but the secretary and the treasurer shall 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 provided by the will of the sanitary board.

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

Acts 1933, Ex. Sess., c. 25, § 18; Acts 1939, c. 96; Acts 1953, c. 146; Acts 1957, c. 95; Acts 1992, c. 95; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

- Health ☞ 369.
- Municipal Corporations ☞ 711.
- Westlaw Topic Nos. 198H, 268.
- C.J.S. Health and Environment §§ 7 to 17, 26 to 27, 44 to 45, 98 to 100.
- C.J.S. Municipal Corporations § 1535.

**Notes of Decisions**

- Funds** 4
- Membership of sanitary boards** 2
- Powers and duties of sanitary boards** 1
- Public utilities** 3

board could under law of Virginia acquire property in that state and carry out contract of erecting sewage disposal plant 1933, 1st Ex.Sess., c. 25, as amended 1933, 2d Ex.Sess., c. 48. *Bernard v. Bluefield*, 1936, 186 S.E. 298, 117 W.Va. Municipal Corporations ☞ 277

**1. Powers and duties of sanitary boards**

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. *U.S. v. City of Charleston*, 1957, 149 F.Supp. 866. Health ☞ 369

City which created sanitary board for purpose of erecting sewage disposal plant held authorized to incorporate such sanitary board as a nonstock corporation for purpose of being domesticated in Virginia as a sewage purification company under Virginia law, where no other way was pointed out by which city or sanitary

**2. Membership of sanitary boards**

Where sanitary board created by municipality optional for either mayor or city manager (not both) to be appointed to board. 5: Op.Atty.Gen. 217 (February 9, 1967) 1' 93382.

**3. Public utilities**

Under statute declaring that words "public utility" shall include any person or partnership or association of persons including municipality engaged in any business which is a public utility, sewer system owned and operated by municipality was a "public utility" and Public Service Commission's jurisdiction over the system was vested with jurisdiction to issue or regulate municipal sewer system. *City of Bluefield v. Public Service Commission*, 1967, 200 W.Va. 100, 154 S.E.2d 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

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and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code, 16-13-1 et seq., 16-13-2, 16-13-3, 16-13-5, 16-13-16, 16-13-18, 16-13-23,

24-1-1, 24-2-1, 24-3-1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ⇨ 113

**4. Funds**

Charleston Sanitary Board treasurer must deliver funds collected from sewer system users to Charleston city treasurer. 52 W.Va. Op. Atty. Gen. 497 (October 6, 1967) 1967 WL 93425.

**§ 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, 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.

Acts 1957, c. 138; Acts 1967, c. 105.

*Acts 1976, c. 33, provided that all references to "justice of the peace" in the code of West Virginia mean "magistrate." See § 50-1-17.*

**Library References**

- Health ⇨ 369.
- Municipal Corporations ⇨ 885.
- Westlaw Topic Nos. 198H, 268.
- C.J.S. Health and Environment §§ 7 to 9, 16 to 17, 26 to 27, 44 to 45, 98 to 100.
- C.J.S. Municipal Corporations § 1628.

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

Any municipality operating a sewage collecting system and/or a sewage disposal plant or plants or stormwater works as defined in this article, or which

as herein provided has ordered the construction or acquisition of such w (in this section called the owner), is hereby authorized to contract with on more other municipal corporations or political subdivisions within the statu this section called the lessee), and such lessees are hereby authorized to e into contracts with the owners, for the service of such works to such les and their inhabitants, but only to the extent of the capacity of the works wit impairing the usefulness thereof to the owners, upon such terms and condit as may be fixed by the boards and approved by ordinances of the respec contracting parties: Provided, That no contract shall be made for a perio more than forty years or in violation of the provisions of said ordin authorizing bonds hereunder or in violation of the provisions of said indenture.

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

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

Acts 1933, Ex. Sess., c. 25, § 19; Acts 1981, 1st Ex. Sess., c. 2; Acts 2001, c. 212, e days after April 14, 2001.

**Library References**

Municipal Corporations ¶328.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 10  
1029.

**Notes of Decisions**

**In general 1**

**1. In general**

Under provisions of statute relating to contract with other municipalities for service of sewage works, city which ordered construction of sewage disposal plant was authorized to contract with town to provide that town would have the right to use part of the capacity of the plant in return for contributing to its cost and town was authorized to enter into such con-

tracts with city for the use of the plant, ar that town was unable to sell revenue because it was not allowed to have part c ship in the plant or in the interceptor sewe not mean that town was not liable for pay agreed to under the contracts, where c ferred to buy the revenue bonds issued l town. Code, 16-13-9, 16-13-19, 16-1 City of Morgantown v. Town of Star City, 195 S.E.2d 166, 156 W.Va. 529. Mu Corporations ¶ 277

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MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS § 16-13-22

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§ 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.

Acts 1933, Ex. Sess., c. 25, § 20.

Library References

Municipal Corporations ¶288(2).  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations § 969.

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

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

Acts 1933, Ex. Sess., c. 25, § 21.

Library References

Municipal Corporations ¶937, 955.  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations §§ 1707, 1711.

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

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

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municipality may serve and supply shall be those areas from which stormw: affects or drains into the municipality.

The jurisdiction and authority provided by this section does not extenc highways, road and drainage easements, and/or stormwater facilities constr ed, owned and/or operated by the West Virginia Division of Highways.

Acts 1933, Ex. Sess., c. 25, § 22; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

Municipal Corporations ⇨711.  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations § 1535.

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

Any municipality is authorized and empowered to accept loans or grants procure loans or temporary advances evidenced by notes or other negoti instruments issued in the manner, and subject to the privileges and limitati set forth with respect to bonds authorized to be issued under the provisior this article, for the purpose of paying part or all of the cost of acquisitio construction of said sewage works and the construction of betterments improvements thereto, and for the other purposes herein authorized, from authorized agency of the state or from the United States of America or federal or public agency or department of the United States or any pri agency, corporation or individual, which loans or temporary advances, inc ing the interest thereon, may be repaid out of the proceeds of bonds autho to be issued under the provisions of this article, the revenues of the said sev works or grants to the municipality from any agency of the state or from United States of America or any federal or public agency or department c United States or any private agency, corporation or individual or from combination of such sources of payment, and to enter into the nece contracts and agreements to carry out the purposes hereof with any agen the state, the United States of America or any federal or public agen department of the United States, or with any private agency, corporatic individual. Any other provisions of this article to the contrary notwithstan interest on any such loans or temporary advances may be paid from proceeds thereof until the maturity of such notes or other negotiable in ment.

In no event shall any such loan or temporary advance be a general oblig of the municipality and such loans or temporary advances, includin interest thereon, shall be paid solely from the sources specified in this se

Acts 1949, c. 93; Acts 1961, c. 107; Acts 1980, c. 59; Acts 1981, 1st Ex. Sess., c. 2 1986, c. 118.

**Library References**

Municipal Corporations ⇨864(3).  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1  
1585, 1587.

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# MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS § 16-13-22c

## Notes of Decisions

Power to incur indebtedness and expenditures 1

Repayment of loans and advances 2

### 1. Power to incur indebtedness and expenditures

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not "debts" within provision of West Virginia Constitution containing limitations on power of a municipality to incur debts. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 864(3)

### 2. Repayment of loans and advances

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mo-

bilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 1037

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 950(15)

Under agreement between West Virginia city and Federal Works Administrator, in accordance with the War Mobilization and Reconversion Act of 1944, West Virginia city incurred obligation to repay advances made for purpose of plan preparation for construction of proposed sewage treatment and disposal system if and when construction of the sewage treatment plant should be started and would not be obligated to repay the advances if the construction were not undertaken. War Mobilization and Reconversion Act of 1944, §§ 101 et seq., 501, 58 Stat. 785, 791. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. United States ⇨ 82(1)

## § 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.

Acts 1949, c. 93.

### Library References

Municipal Corporations ⇨ 328.  
Westlaw Topic No. 268.

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

## § 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 terms and security, the ordinance, the trust indenture, rates, or other aspect the bonds.

Acts 1949, c. 93.

**Library References**

Municipal Corporations ¶913.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 16  
1648, 1651.

**§ 16-13-22d. Subordination of bonds**

Notwithstanding any other provisions to the contrary in this article, 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 shall 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 authorized 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.

Acts 1949, c. 93.

**Library References**

Municipal Corporations ¶950(15).  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 17  
1709.

**§ 16-13-22e. Operating contract**

Any such municipality may enter into contracts or agreements with persons, firms or corporations for the operation and management of facilities and properties of said sewerage system, or any part thereof, for a specified 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.

Acts 1955, c. 132.

**Library References**

Municipal Corporations ¶328.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 10  
1029.

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

Said bonds and the interest thereon, together with all properties and facilities of said municipality owned or used in connection with the works, and all moneys, revenues and other income of such municipality derived from

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**MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS § 16-13-22g**

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works shall be exempt from all taxation by the state of West Virginia or any county, municipality, political subdivision or agency thereof.

Acts 1955, c. 132; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

Taxation ⇨2316, 3519.

Westlaw Topic No. 371.

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

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

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

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

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

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

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

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(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 performance of any covenant or agreement with bondholders, and the manner and terms upon which defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed;

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

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

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

(j) Such other additional covenants as shall be considered necessary and desirable for the security of the holders of bonds issued hereunder, notwithstanding that other covenants are not expressly enumerated hereunder, it being the intention hereof to grant to the municipalities the power to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant such municipalities full and complete power to enter into any contracts, covenants or agreements with holder of bonds issued hereunder not inconsistent with the constitution of the state of West Virginia, Acts 1955, c. 132; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

Municipal Corporations §922.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 168  
1686, 1697.

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

**MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS § 16-13-23a**

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.

Acts 1933, Ex. Sess., c. 25, § 23.

**Library References**

Municipal Corporations ⇨ 270, 906.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1645 to  
1646, 1702.

**Notes of Decisions**

**Public utilities 1**

**1. Public utilities**

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer ser-

vices, and power of Commission to supervise and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code, 16-13-1 et seq., 16-13-2, 16-13-3, 16-13-5, 16-13-16, 16-13-18, 16-13-23, 24-1-1, 24-2-1, 24-3-1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ⇨ 113

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

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

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

The governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the proceeds derived from rates or charges until

completion of the construction, to be remitted to and administered by municipal bond commission by expending and paying the costs and expense construction and operation in the manner as provided by said ordinance.

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

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

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

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

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

If any rate, fees or charge so established is not paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the sanitary board of the 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 plant, machinery, or works necessary to comply with the order of the director or division of environmental protection or the environmental quality board, and the authority provided herein to establish, maintain and collect rates, fees and charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as the article provides for or requires the issuance of revenue bonds or the imposition of rates, fees and charges in connection with the bonds: Provided, That ex

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# MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS § 16-13-24

Note 1

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 the municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article: Provided, however, That the jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways and no rates, fees or charges for stormwater services or costs of compliance may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

Acts 1955, c. 135; Acts 1967, c. 105; Acts 1994, c. 61; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

### Library References

Municipal Corporations Ⓒ712.  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations § 1535.

### Notes of Decisions

#### In general 1

##### 1. In general

Under provisions of statute relating to contract with other municipalities for service of sewage works, city which ordered construction of sewage disposal plant was authorized to contract with town to provide that town would have the right to use part of the capacity of the plant in return for contributing to its cost and town was authorized to enter into such con-

tracts with city for the use of the plant, and fact that town was unable to sell revenue bonds because it was not allowed to have part ownership in the plant or in the interceptor sewers did not mean that town was not liable for payments agreed to under the contracts, where city offered to buy the revenue bonds issued by the town. Code, 16-13-9, 16-13-19, 16-13-23a. City of Morgantown v. Town of Star City, 1973, 195 S.E.2d 166, 156 W.Va. 529. Municipal Corporations Ⓒ 277

## § 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.

Acts 1933, Ex. Sess., c. 25, § 24.

### Library References

Statutes Ⓒ235.  
Westlaw Topic No. 361.  
C.J.S. Statutes § 376.

### Notes of Decisions

#### In general 1

##### 1. In general

Under contract between municipal sanitary board and contractor requiring contractor to

bear cost and expense of damage to surface, overhead or subsurface structures in construction of sanitary sewer system, contractor was liable to water company for expense of removal of all water and other pipes under streets which interfered with construction of sewer system.

**§ 16-13-24**

**PUBLIC HEA**

Note 1

Code, 16-13-1 et seq., 16-13-17, 16-13-24. ham, 1957, 98 S.E.2d 891, 143 W.Va. 1.  
West Virginia Water Service Co. v. Cunning- nicipal Corporations ⇐ 400

ARTICLE 13

SEWAGE WORKS AND STORMWATER WORKS

	Section	
Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjust-	16-13-23a.	ment; hearing; lien and recovery discontinuance of services. Additional powers of municipality to cease pollution.

-14. Securing bonds by trust indenture

United States Code Annotated

Indenture Act of 1939, see 15 U.S.C.A. seq.

-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjustment; hearing; lien and recovery; discontinuance of services

The governing body has the power and duty, by ordinance, to establish and maintain just and reasonable rates, fees or charges for the use of and the service rendered by:

sewerage works, to be paid by the owner of each and every lot, parcel of real estate or other property 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 stormwater works, to be paid by the owner of each and every lot, parcel of real estate or other property that in any way uses or is served by such stormwater works or whose property is adjacent to or protected by the stormwater works or any user of such stormwater works.

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

New applicants for service shall indicate to the governing body whether they are a tenant or owner with respect to the service location. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if applicable, that portion of the fee to be assessed to the tenant.

The governing body may collect from all new applicants for service a deposit of fifty dollars or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of service rates, fees and charges in the event the applicant becomes delinquent as provided in this section. In any case where a deposit is forfeited because of delinquent service rates, fees and charges which were delinquent at the time of disconnection or termination of service, service may not be reconnected or reinstated by the governing body unless the applicant has a deposit equal to fifty dollars or a sum equal to two twelfths of the average usage of the applicant's specific customer class, whichever is greater, is remitted to the governing body within twelve months of prompt payment history, the governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as the Public Health Commission may prescribe: *Provided*, That where the customer is a tenant, the governing body is not required to return the deposit until the time the tenant discontinues service with the governing body. Whenever any rates, fees, rentals or charges for services or facilities provided remain unpaid for a period of twenty days after they become due, the user of such services and facilities provided is delinquent. The user is liable until all rates, fees and charges are fully paid. The governing body may, under reasonable rules promulgated by the Public Health Commission, shut off and discontinue water services to a delinquent user of such services ten days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments.

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

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

(h) After introduction of the ordinance fixing such rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of rates, fees or charges, shall be given by publication as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the municipality. The first publication shall be made at least ten days before the date fixed in the notice for the hearing.

(i) After the hearing, which may be adjourned, from time to time, the ordinance establishing rates, fees or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of the rates, fees and charges shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges 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.

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

(k) All rates, fees or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate, fees or charge is not paid within twenty days after it 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. The lien may be foreclosed against such lot, parcel of land or building in accordance with the laws relating thereto. 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.

(l) Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of twenty days after they become due, the property and the owner thereof, as well as the user of the services and facilities shall be delinquent until such time as all rates, fees and charges are fully paid. When any payment for rates, rentals, fees or charges becomes delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

(m) The board collecting the rates, fees or charges shall be obligated under reasonable rules to shut off and discontinue both water and sewer services to all delinquent users of water, sewer or stormwater facilities and shall not restore either water facilities or sewer facilities to any delinquent user of any such facilities until all delinquent rates, fees or charges for water, sewer and stormwater facilities, including reasonable interest and penalty charges, have been paid in full, as long as such actions are not contrary to any rules or orders of the Public Service Commission.

Acts 1933, Ex. Sess., c. 25, § 16; Acts 1933, 2nd Ex. Sess., c. 48; Acts 1959, c. 125; Acts 1967, c. 105; Acts 2001, c. 212, eff. 90 days after April 14, 2001; Acts 2004, c. 185, eff. 90 days after March 12, 2004; Acts 2008, c. 202, eff. March 8, 2008.

#### § 16-13-23a. Additional powers of municipality to cease pollution

(a) Notwithstanding any other provision contained in this article, and in addition thereto, the governing body of any municipality which has received or which hereafter receives an

and by the Secretary of the Department of Environmental Protection or the Mental Quality Board requiring the municipality to cease the pollution of any stream is hereby authorized to establish and maintain, by ordinance, just and equitable rates or charges for the use of the services and facilities of the existing municipal sewer or stormwater system, or for the use of the services and facilities to be rendered or the construction of any works and system necessary by virtue of said order, to be paid by the owner or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system or stormwater system, or that in any way is served thereby, and may change and readjust such rates, fees or charges from time to time.

Such rates, fees or charges shall be sufficient to all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection, purification and disposal of sewage or stormwater and the repair, alteration and extension of existing sewer facilities or stormwater facilities, as may be necessary to comply with the order of the Secretary of the Department of Environmental Protection or the Mental Quality Board, and for the operation, maintenance and repair of the entire sewer and stormwater system.

The governing body shall create, by ordinance, a sinking fund to accumulate and hold for the use of all or all of the proceeds derived from rates or charges until completion of the construction, to be remitted to and administered by the Municipal Bond Commission by the governing body and paying the costs and expenses of construction and operation in the manner as provided in said ordinance.

After the completion of the construction, the rates, fees or charges shall be sufficient in amount 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 stormwater works.

Such rates, fees or charges shall be established until after a public hearing, at which the potential users of the works and owners of property served or to be served thereby shall have had an opportunity to be heard concerning the proposed rates or charges.

Before the introduction of the ordinance fixing rates, fees or charges, and before the same is enacted, notice of such hearing setting forth the proposed schedule of rates, fees or charges shall be given by publication of notice as a Class II-0 legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The publication for such publication is the municipality. The first publication shall be made at least ten days before the date fixed therein for the hearing.

At such hearing, which may be adjourned from time to time, the ordinance fixing the rates, fees or charges, either as originally introduced or as modified and amended, may be passed and put into effect. A copy of the schedule of the rates, fees and charges established shall be kept on file in the office of the sanitary board having charge of the construction and operation of such works and in the office of the clerk of the municipality. The schedule of rates, fees and charges shall be open to inspection by all parties interested. Such rates, fees or charges established for any class of users or property served shall be sufficient to cover any additional premises thereafter served which fall within the same class, and no separate hearing or notice is required.

Any change or readjustment of rates, fees or charges may be made in the same manner as provided herein provided that the rates, fees or charges were originally established as hereinbefore provided: *Provided*, That no change or readjustment be made substantially pro rata, as to all classes of service, nor shall any separate notice be required.

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

The municipality exercising the powers given herein has the authority to construct, improve, equip, operate, repair and maintain any plants, machinery or works necessary to comply with the order of the Secretary of the Department of Environmental

Protection or the Environmental Quality Board and the authority provided herein to establish, maintain and collect rates, fees or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as the article provides for or requires the issuance of revenue bonds or the imposition of rates, fees and charges in connection with the bonds: *Provided*, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the Secretary of the Department of Environmental Protection or the Environmental Quality Board and the rights, powers and duties of the municipality and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article.

(k) The jurisdiction and authority provided by this section does not extend to highways, road and drainage easements and stormwater facilities constructed, owned or operated by the West Virginia Division of Highways and no rates, fees or charges for stormwater services or costs of compliance may be assessed against highways, road and drainage easements and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

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

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

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

Acts 1955, c. 135; Acts 1967, c. 105; Acts 1994, c. 61; Acts 2001, c. 212, eff. 90 days after April 14, 2001; Acts 2008, c. 202, eff. March 8, 2008.

ARTICLE 13A

PUBLIC SERVICE DISTRICTS

<b>Section</b> 16-13A-9. Rules; service rates and charges; discontinuance of service; required	<b>Section</b> water and sewer connections; lien for delinquent fees.
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**§ 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees**

(a)(1) The board may make, enact and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district.

## ARTICLE 2

### WATER POLLUTION CONTROL REVOLVING FUND ACT

#### Section

- 22C-2-1. Definitions.
- 22C-2-2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.
- 22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.
- 22C-2-4. Annual audit.
- 22C-2-5. Collection of money due to the fund.
- 22C-2-6. State construction grants program established; special fund.
- 22C-2-7. Environmental review of funded projects.
- 22C-2-8. Conflicting provisions.

#### § 22C-2-1. Definitions

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Authority" means the water development authority provided for in section four, article one of this chapter.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local entity that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

(1) Developmental, planning and feasibility studies, surveys, plans and specifications;

(2) Architectural, engineering, financial, legal or other special services;

(3) Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;

(4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;

(5) The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, and the funding of accounts and reserves which the authority may require; and

(6) Other items that the division of environmental protection determines to be reasonable and necessary.

(c) "Fund" means the state water pollution control revolving fund provided for in this article as it may be expanded or modified from time to time pursuant

## § 22C-2-1

## ENVIRONMENTAL RESOURCES

to the clean water act, as amended, the federal safe drinking water act, as amended or by the executive order of the governor issued to comply with federal laws relating to the acts.

(d) "Instrumentality" means the division of environmental protection or the agency designated by an order of the governor as having the primary responsibility for administering the fund pursuant to the federal clean water act, as amended, and the federal safe drinking water act, as amended, or other federal laws.

(e) "Local entity" means any county, city, town, municipal corporation, authority, district, public service district, commission, banking institution or political subdivision in West Virginia.

(f) "Project" means any public water or wastewater treatment facility located or to be located in or outside this state by a local entity and includes:

- (1) Sewage and wastewater collection, treatment and disposal facilities;
- (2) Public water transportation, treatment and distribution facilities;
- (3) Drainage facilities and projects;
- (4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;
- (5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and
- (6) Other projects allowable under federal law.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

### United States Code Annotated

Water Pollution Prevention and Control,

Generally, see 33 U.S.C.A. § 1251 et seq.

Effluent limitations, see 33 U.S.C.A. § 1311 et seq.

Water Pollution, Waste Treatment Management, grants, see 33 U.S.C.A. § 1281 et seq.

## § 22C-2-2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency

The division of environmental protection shall act as the instrumentality that is empowered to enter into capitalization agreements with the United States environmental protection agency, to accept capitalization grant awards made under the federal clean water act, as amended, the safe drinking water act, as amended, and other federal laws and to otherwise manage the fund provided for in this article in accordance with the requirements of said federal laws.

Acts 1994, c. 61.

### Library References

Environmental Law ¶216.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 130, 172.

**§ 22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund**

(a) Under the direction of the division of environmental protection, the water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local entities, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local entities to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the division of environmental protection in administering the provisions of this article: Provided, however, That moneys in the fund shall be used to make grants for projects to the extent allowed or authorized by federal law.

(b) The director of the division of environmental protection, in consultation with the authority, shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, to:

(1) Govern the disbursement of moneys from the fund; and

(2) Establish a state water pollution control revolving fund program to direct the distribution of grants or loans from the fund to particular local entities and establish the interest rates and repayment terms of the loans.

(c) In order to carry out the administration and management of the fund, the authority is authorized to employ officers, employees, agents, advisers and consultants, including attorneys, financial advisers, engineers, other technical advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

## § 22C-2-3

## ENVIRONMENTAL RESOURCES

### Administrative Code References

Program rules, see W. Va. Code St. R. § 47-31-1 et seq.

### Library References

Environmental Law ☞179, 180, 216.

States ☞127.

Westlaw Topic Nos. 149E, 360.

C.J.S. Health and Environment §§ 130, 172.

C.J.S. States §§ 386 to 387.

## § 22C-2-4. Annual audit

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 defrayed as a part of the cost of construction of a project or as an administrative expense under the provisions of subsection (a), section three of this article.

Acts 1994, c. 61.

### Library References

Environmental Law ☞179, 180, 216.

States ☞121.

Westlaw Topic Nos. 149E, 360.

C.J.S. Health and Environment §§ 130, 172.

C.J.S. States §§ 322 to 323, 372.

## § 22C-2-5. Collection of money due to the fund

In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

(a) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local entity pursuant to this article, and may proceed directly to enforce and collect the service charges, together with all necessary costs of the enforcement and collection.

(b) The authority may exercise, in its own name or in the name of and as the agent for a particular local entity, all of the rights, powers and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

(c) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local entity of all of the terms and conditions of the loan agreement between the state and that local entity including:

(1) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(2) The enforcement and collection of service charges; and

(3) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision.

The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

**Library References**

Environmental Law ☞221.  
Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 130, 150,  
172.

**§ 22C-2-6. State construction grants program established; special fund**

(a) The director of the division of environmental protection shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to establish a state construction grants program that is designed to complement and supplement the state water pollution control revolving fund program established pursuant to subsection (b), section three of this article.

(b) The special fund designated "The West Virginia Construction Grants Fund" established in the state treasury is continued. The special fund shall be comprised of moneys appropriated to said fund by the Legislature, assessments on existing wastewater treatment facilities, and all other sums designated for deposit to the special fund from any source, public or private: Provided, That such assessments shall be made and collected in accordance with fee schedules to be established by legislative rules promulgated by the director of the division of environmental protection, in accordance with chapter twenty-nine-a of this code. Moneys in the special fund shall be used solely for the state construction grants program established under subsection (a) of this section: Provided, however, That moneys in the special fund may be utilized to defray the costs incurred by the division of environmental protection in administering the provisions of this section.

Acts 1994, c. 61.

**Administrative Code References**

Construction grants program rules, see W. Va. Code St. R. § 47-33-1 et seq.

**Library References**

Environmental Law ☞180, 217.  
States ☞127.  
Westlaw Topic Nos. 149E, 360.

C.J.S. Health and Environment §§ 130, 133,  
172.  
C.J.S. States §§ 386 to 387.

**§ 22C-2-7. Environmental review of funded projects**

(a) The division of environmental protection shall conduct an environmental review on each project funded under this article. The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the environmental review of funded projects: Provided, That the rules shall be

**§ 22C-2-7**

**ENVIRONMENTAL RESOURCES**

consistent with the regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the division of environmental protection is authorized to direct a local entity, or its agent, to implement all measures that, in the judgment of the director, are necessary in order to mitigate or prevent adverse impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of the projects under the federal clean water act, as amended.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

**Library References**

Environmental Law ¶179, 180, 574, 595(3).  
Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 105 to  
106, 111, 113 to 114, 116, 125, 172.

**§ 22C-2-8. Conflicting provisions**

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article are controlling.

Acts 1994, c. 61.

**Library References**

Environmental Law ¶167, 170, 575.  
Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 106, 111,  
172.

termines to be appropriate, but subject to the provisions of any resolution re issuance of water development revenue bonds or notes or water development aiding bonds of the authority or any trust agreement securing the same. Any l agency which has power to construct, operate and maintain public water mwater systems or wastewater facilities may enter into a contract or lease with whereby the use or services of any water development project of the authority available to such governmental agency and pay for such use or services such er charges as may be agreed to by such governmental agency and the authority.

nmmental agency or agencies or combination thereof may cooperate with the the acquisition or construction of a water development project and shall enter eements with the authority as are necessary, with a view to effective cooperative ifeguarding of the respective interests of the parties thereto, which agreements e for such contributions by the parties thereto in such proportion as may be and such other terms as may be mutually satisfactory to the parties, including, ation, the authorization of the construction of the project by one of the parties ent for all of the parties and the ownership and control of the project by the the extent necessary or appropriate for purposes of the issuance of water revenue bonds by the authority. Any governmental agency may provide such as is required under such agreements by the appropriation of money or, if y a favorable vote of the electors to issue bonds or notes or levy taxes or and issue notes or bonds in anticipation of the collection thereof, by the issuance notes or by the levying of taxes or assessments and the issuance of bonds or notes on of the collection thereof and by the payment of such appropriated money or the such bonds or notes to the authority pursuant to such agreements.

nmmental agency, pursuant to a favorable vote of the electors in an election held ose of issuing bonds to provide funds to acquire, construct or equip, or provide and interests in real estate for a public water facility, stormwater system or facility, whether or not the governmental agency at the time of such an election ority to pay the proceeds from such bonds or notes issued in anticipation thereof rity as provided in this section, may issue such bonds or notes in anticipation of e thereof and pay the proceeds thereof to the authority in accordance with an e between such governmental agency and the authority: *Provided*, That the authority of the governmental agency finds and determines that the water t project to be acquired or constructed by the authority in cooperation with such al agency will serve the same public purpose and meet substantially the same l as the facility otherwise proposed to be acquired or constructed by the al agency with the proceeds of such bonds or notes.

61; Acts 2008, c. 203, eff. June 5, 2008.

## ARTICLE 2

### WATER POLLUTION CONTROL REVOLVING FUND ACT

Definitions.

Collection of money due to the fund.

#### 1. Definitions

he context in which used clearly requires a different meaning, as used in this

hority" means the Water Development Authority provided for in section four, of this chapter.

st" as applied to any project financed under the provisions of this article means the costs incurred by a local entity that are reasonable and necessary for carrying out and undertakings necessary or incident to the accomplishment of any project

- (1) Developmental, planning and feasibility studies, surveys, plans and specifications;
- (2) Architectural, engineering, financial, legal or other special services;
- (3) Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;
- (4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;
- (5) The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service and the funding of accounts and reserves which the authority may require; and
- (6) Other items that the Department of Environmental Protection determines to be reasonable and necessary.

(c) "Fund" means the State Water Pollution Control Revolving Fund provided for in this article as it may be expanded or modified, from time to time, pursuant to the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, as amended, the Federal Safe Drinking Water Act 42 U.S.C. § 300f through § 300j-26, inclusive, as amended, or by the executive order of the Governor issued to comply with federal laws relating to the acts.

(d) "Instrumentality" means the Department of Environmental Protection or the agency designated by an order of the Governor as having the primary responsibility for administering the fund pursuant to the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, as amended, and the Federal Safe Drinking Water Act 42 U.S.C. § 300f through § 300j-26, inclusive, as amended, or other federal laws.

(e) "Local entity" means any county, city, town, municipal corporation, authority, district, public service district, commission, banking institution, political subdivision, regional governmental authority, state government agency, interstate agency or not-for-profit association or corporation in West Virginia.

(f) "Project" means any water or wastewater treatment facility located or to be located in or outside this state by a local entity and includes:

- (1) Sewage and wastewater collection, treatment and disposal facilities;
- (2) Public water transportation, treatment and distribution facilities;
- (3) Drainage facilities and projects;
- (4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;
- (5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and
- (6) Other projects allowable under federal law.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996; Acts 2007, c. 132, eff. June 8, 2007.

#### United States Supreme Court

##### Environmental law,

Clean water, dams, discharge potential,  
state certification requirement under

Clean Water Act, see *S.D. Warren Co. v. Maine Bd. of Environmental Protection*, 2006, 126 S.Ct. 1843.

## ENVIRONMENTAL RESOURCES

### Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency

#### United States Supreme Court

law,  
water, dams, discharge potential,  
certification requirement under

Clean Water Act, see S.D. Warren Co. v.  
Maine Bd. of Environmental Protection,  
2006, 126 S.Ct. 1843.

#### Collection of money due to the fund

to ensure the timely payment of all sums due and owing to the fund under a loan agreement between the state and a local entity, and notwithstanding any provision in this code to the contrary, the authority has and may, at its option, exercise the rights and remedies in the event of any default by a local entity under a loan

authority may directly impose, in its own name and for its own benefit, service charges on all users of a project funded by a loan distributed to a local entity pursuant to this article and may proceed directly to enforce and collect the service charges, together with the costs of the enforcement and collection.

Authority may exercise, in its own name or in the name of and as the agent for a local entity, all of the rights, powers and remedies of the local entity with respect to the project which may be conferred upon the local entity by statute, rule, regulation or ordinance, including all rights and remedies with respect to users of the project funded by a loan distributed to that local entity pursuant to this article.

Authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local entity of all of the terms and conditions of the loan agreement between the state and that local entity including:

adjustment of service charges as required to repay the loan or otherwise satisfy the loan agreement;

enforcement and collection of service charges; and

enforcement by the local entity of all rights and remedies conferred by statute, rule or judicial decision. The rights and remedies enumerated in this section are in addition to the rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

Loans made for projects defined in subdivision (6), subsection (f), section one of this article in the direction of the Department of Environmental Protection, the authority shall have a lien or other interest in real or personal property with the right to foreclose upon the property to secure loans made from the fund.

1996, c. 257, § 11; Acts 1996, c. 257, eff. 90 days after March 8, 1996; Acts 2007, c. 132, eff. June 8, 2007.

#### Environmental review of funded projects

#### United States Supreme Court

law,  
water, dams, discharge potential,  
certification requirement under

Clean Water Act, see S.D. Warren Co. v.  
Maine Bd. of Environmental Protection,  
2006, 126 S.Ct. 1843.

### ARTICLE 4

## COUNTY AND REGIONAL SOLID WASTE AUTHORITIES

#### Section

Mandatory disposal; proof required;  
penalty imposed; requiring solid  
waste management board and the

Public Service Commission to file  
report.