

CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

Closing Date: April 9, 2009

TRANSCRIPT OF PROCEEDINGS

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State of West Virginia
WATER DEVELOPMENT AUTHORITY
 180 Association Drive, Charleston, WV 25311-1217
 (304) 558-3612 - (304) 558-0299 (Fax)
 Internet: www.wvwda.org - Email: contact@wvwda.org

CLOSING ATTENDANCE LIST

Date April 9, 2009 Time 9:00 a.m. LGA City of White Sulphur Springs Program CWSRF

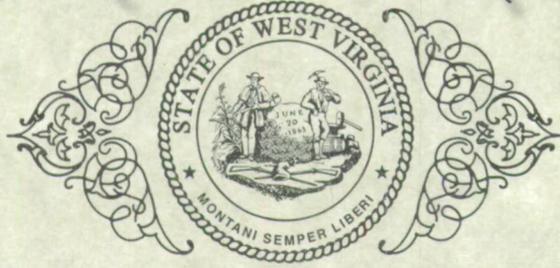
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The Authority requests that the following information concerning the individual who will be responsible for sending Debt Service Payments to the Municipal Bond Commission be provided. (If that individual is in attendance, he/she should also sign above.) Please Print:

Name Linda BARKER Telephone 304, 536, 1854 E-Mail WSS34@suddenlink.com
 Address 34 West Main Street, White Sulph Spgs, WV 24986

REMINDER: As a participant in this program, the Local Governmental Agency (LGA) agrees and is required to submit annually to the WDA a copy of its audited financial statements and a copy of its adopted budget. Also, pursuant to the Loan Agreement and the NonArbitrage Certificate (both of which are contained in the bond transcript) you are to provide annually to the WDA a rebate calculation certificate or an exception opinion showing whether a rebate amount is due to the US Government under arbitrage requirements in Section 148(f) of the US Internal Revenue Code, 1986, as amended.

State of West Virginia



Certificate

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

THIS IS A TRUE COPY OF CHAPTER 16, ARTICLE 13 OF THE WEST VIRGINIA CODE, AND CHAPTER 16 ARTICLE 13 OF THE 2008 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.



Given under my hand and the Great Seal of the State of West Virginia on

April 6, 2009

Natalie E. Tennant

Secretary of State

ARTICLE 13

SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS

Section

- 16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.
- 16-13-2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.
- 16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.
- 16-13-4. Payment of preliminary expenses of surveys, etc.
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- 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.
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- 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,

owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

Acts 1933, Ex. Sess., c. 25, § 1; Acts 1955, c. 132; Acts 1986, c. 118; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations ¶270, 708, 711, 950. C.J.S. Municipal Corporations §§ 1535, 1708
Westlaw Topic No. 268. to 1709.

Notes of Decisions

Construction and application 1
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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)

Statutes relating to supervision and regulation of public utilities by Public Service Commission and statute dealing with municipally owned sewer systems relate to the same subject and should be read and construed together. Code, 16-13-1 et seq., 24-1-1 et seq. State ex rel. *City of Wheeling v. Renick*, 1960, 116 S.E.2d 763, 145 W.Va. 640. Statutes ¶ 223.2(27)

2. Regulation of public utilities

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

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

Public Service Commission has statutory power and authority to control facilities, charges and services of all public utilities, and to hear complaints of persons entitled to services which such utilities afford, subject only to limitation that the requirements shall not be contrary to law and that they be just and fair, just and reasonable, and just and proper. Code, 16-13-1 et seq., 24-1-1 et seq. State ex rel. *City of Wheeling v. Renick*, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ¶ 114; Public Utilities ¶ 119.1

3. Police power

Statute delegating to municipal corporation power by ordinance to create sanitary boards and authorizing such sanitary boards to enter into contracts for construction of sewerage systems is a valid exercise of police power of state. Code, 16-13-1 et seq. *West Virginia Water Service Co. v. Cunningham*, 1957, 98 S.E.2d 891, 143 W.Va. 1. Constitutional Law ¶ 2437; Health ¶ 358

Legislature may delegate police power to cities or counties, as it sees fit. *Brewer v. City of Point Pleasant*, 1934, 172 S.E. 717, 114 W.Va. 572. Constitutional Law ¶ 2437; Constitutional Law ¶ 2438

4. Revenue bonds for construction

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 be-

gan, 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)

In action to cancel certain sewer revenue bonds issued by West Virginia City and to enjoin collection of sewerage service charges assessed for the purpose of liquidating such bonds, District Court was bound by decisions of Supreme Court of Appeals of West Virginia upholding the constitutionality of statute permitting municipalities to issue bonds for self-liquidating 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 property and erecting sewage disposal plant in adjoining state held authorized under statute to issue revenue bonds payable solely from revenues of such plant. Acts 1933, 1st Ex.Sess., c. 25, as amended by Acts 1933, 2d Ex.Sess., c. 48. *Bernard v. City of Bluefield*, 1936, 186 S.E. 298, 117 W.Va. 556. Municipal Corporations ⇨ 919

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 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. 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

6. 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)

7. Jurisdiction

Taxpayers of a city seeking to enjoin collection by city of sewerage service charges assessed 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 amended by Laws W.Va.1933, 2nd Ex.Sess., c. 48; Jud.Code, § 24(1), 28 U.S.C.A. § 1312. *Stevenson 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, operation and maintenance of any works for the collection, treatment or disposal of sewage and, in addition, for the collection and control of stormwater and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of a sanitary board appointed by the governing body as set forth in section eighteen 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 constituted governing body of any municipality.

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

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

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

(6) "Stormwater management program" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater works, including, but not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law: Provided, That, as used in this article, "stormwater management program" shall not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

(7) "Works" means sewage works and stormwater works either separately or collectively.

Acts 1933, Ex. Sess., c. 25, § 2; 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 9, 16 to 17, 26 to 27, 44 to 45, 98 to 100.
C.J.S. Municipal Corporations § 1535.

Notes of Decisions

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Commission, 1964, 137 S.E.2d 426, 148 W.Va. 776. Statutes ☞ 223.2(21)

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*

2. Public utilities

All contracts made by a utility relating to the public service must be deemed to be entered into in contemplation of the exercise by the state of its regulatory power whenever the public interest may make it necessary. *Berkeley County Public Service Sewer Dist. v. West Vir-*

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 other sewers, stormwater conduits, and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof, including, but not limited to, those activities necessary to comply with all federal and state requirements, including stormwater and surface runoff water quality improvement activities.

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

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 best bidder, with power in the board to reject any or all bids. After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may deem expedient, if funds therefor be available or are made available as provided in this article, and shall establish rules and regulations for the use and operation of the works, and of other sewers and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof. The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and shall be exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for such expenses. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this article."

Library References

Health ☞369.
Westlaw Topic No. 198H.

C.J.S. Health and Environment §§ 7 to 9, 16 to 17, 26 to 27, 44 to 45, 98 to 100.

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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 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

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

In agreement between West Virginia city and Federal Works Administrator for advances to be 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 a binding contract in such respect, and, therefore, limitation imposed by West Virginia law on city 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, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. W.Va. 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 such works; (d) direct that revenue bonds of the municipality shall be issued pursuant to this article in such an amount as may be found necessary to pay the

cost of the works; and (e) contain such other provisions as may be necessary in the premises.

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

sewer 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.

Library References

Municipal Corporations Ⓒ294 to 300.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 979 to 985,
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 under and pursuant to the provisions of chapter fifty-four, of the Code of West Virginia, one thousand nine hundred thirty-one, and acts amendatory and supplemental thereto: Provided, That the municipality shall be under no obligation to accept and pay for any property condemned, and shall in no event pay for any property condemned or purchased, except from the funds provided pursuant to this article; and in any proceedings to condemn, such orders may be made as may be just to the municipality and to the owners of the property to be condemned, and an undertaking or other security may be required securing such owners against any loss or damage to be sustained by reason of the failure of the municipality to accept and pay for the property, but such undertaking or security shall impose no liability upon the municipality except such as may be paid from the funds provided under the authority of this article. In event of the acquisition by purchase the board may obtain and exercise an option from the owner or owners of said property for the purchase thereof, or may enter into a contract for the purchase thereof, and such purchase may be made upon such terms and conditions, and in such manner as the board may deem proper. In event of the acquisition of any works already constructed by purchase or condemnation, the board at or before the time of the adoption of the ordinance described in section five hereof, shall cause to be determined what repairs, replacements, additions, and betterments will be necessary in order that such works may be effective for their purpose, and an estimate of the cost of such improvements shall be included in the estimate of the cost required by section five hereof, and such improvement shall be made upon the acquisition of the works and as a part of the cost thereof.

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 or construction thereof, the cost of all property, rights, easements, and franchises deemed necessary or convenient therefor and for the improvements determined

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

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

payable solely from the fund herein provided for the payment, and the bonds may not, in any respect, be a corporate indebtedness of the municipality, within the meaning of any statutory or constitutional limitations thereon. All the details of the bonds shall be determined by ordinance or ordinances of the municipality.

Acts 1933, Ex. Sess., c. 25, § 9; Acts 1949, c. 93; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations Ⓒ870, 911, 950(15). Westlaw Topic No. 268. C.J.S. Municipal Corporations §§ 1573 to 1579, 1581, 1647 to 1649, 1708 to 1709.

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 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)

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)

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)

Where statute authorizing municipalities to issue bonds for self-liquidating municipal project, provided that bonds should not be corporate indebtedness, bonds held not to create "debts" within constitutional inhibition (Acts 1933 [1st Ex.Sess.] c. 25, §§ 9, 10, 16, 21). *Brewer v. City of Point Pleasant*, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations Ⓒ 907

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

Statute permitting municipalities to issue bonds for self-liquidating municipal projects held legitimate delegation of legislative power.

MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS § 16-13-10

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

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

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

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 may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in said ordinance authorizing the issuance of the bonds first issued or in the trust indenture hereinafter authorized, shall be deemed to be of the same issue and shall be entitled to payment without preference or priority of the bonds first issued. Prior to the preparation of the definitive bonds, temporary bonds may under like restrictions be issued with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

Acts 1933, Ex. Sess., c. 25, § 10; Acts 1970, c. 11; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2.

Library References

Municipal Corporations ¶922, 950(15).
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1684 to
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 works equally with all other bonds issued pursuant to said ordinance without preference or distinction between any one bond and any other definite bonds upon the issuance of the latter.

Acts 1933, Ex. Sess., c. 25, § 11.

Library References

Municipal Corporations ¶911, 950(15).
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to
1649, 1708 to 1709.

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

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

Acts 1933, Ex. Sess., c. 25, § 12.

Library References

Municipal Corporations Ⓒ911, 950(15).
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to
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).
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to
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, safeguarding and application of all moneys, and may provide that the works shall be contracted for, constructed and paid for under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, successors, assigns or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the works or other moneys pertaining thereto be satisfactory to such purchasers, successors, assigns or nominees. Such indenture may set forth the rights and remedies of the bondholders and/or such trustee, restricting the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. Except as in this article otherwise provided, the governing body may provide by ordinance or in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues of the works to such officer, board or depository as it may determine for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine.

Acts 1933, Ex. Sess., c. 25, § 14.

Library References

Municipal Corporations ¶911, 950(15).
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to
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 said ordinance create a sinking fund, to be remitted to and administered by the West Virginia municipal bond commission, for the payment of the bonds and the interest thereon and the payment of the charges of banks or trust companies for making payment of such bonds or interest, and shall set aside and pledge a sufficient amount of the net revenues of the works, hereby defined to mean the revenues of the works remaining after the payment of the reasonable expense of operation, repair and maintenance, such amount to be paid by the board into said sinking fund at intervals to be determined by ordinance prior to issuance of the bonds, for: (a) The interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or, if all bonds mature at one time, the proper maintenance of a sinking fund in such amounts as are necessary and sufficient for the payment thereof at such time; (d) a margin for safety and for the payment of premiums upon bonds retired by call or purchase as herein provided, which margin, together with any unused surplus of such margin carried forward from the preceding year, shall equal ten percent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenue of the works. Prior to the issuance of the bonds the board may by ordinance be given the right to use

or direct the West Virginia municipal bond commission to use such sinking fund or any part thereof in the purchase of any of the outstanding bonds payable therefrom at the market price thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled and shall not again be issued. After the payments into such fund as herein required, the board may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by the board sufficient for operation, repair and maintenance for an ensuing period of not less than twelve months and for depreciation, into the sinking fund or into a fund for extensions, betterments and additions to the works. The amounts of the balance of the net revenue as and when so set apart shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and with the ordinance pursuant to which such bonds have been issued. The West Virginia municipal bond commission is hereby authorized to act as fiscal agent for the administration of such sinking fund, under any ordinance passed pursuant to the provisions of this article, and shall invest all such sinking funds as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the governing body directly thereto.

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 the applicant's specific customer class, whichever is greater, to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent 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 sum 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 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 service 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 furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The governing body may, under reasonable rules promulgated by the public service commission, shut off and 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 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 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 or

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

view 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

4. Water service termination

Any impairment of sewer revenue bonds issued by cities providing for imposition of liens against property for unpaid sewer charges, by statutory amendment precluding cities from attaching lien to landlord's property for tenant's failure to pay sewer charges, was not "substantial impairment" and, thus, amendment did not violate constitutional prohibition against impairment of contracts, where bond contracts acknowledged that parties' rights were subject to legislative regulation, contracts were merely modified, abridged right was not central to parties' undertaking, and prior legislation provided utilities with far more effective remedy of water service termination for unpaid sewer charges. U.S.C.A. Const. Art. 1, § 10, cl. 1; W.Va.Code, §§ 8-18-23, 16-13-16. *City of Charleston v. Public Service Com'n of West Virginia*, 1995, 57 F.3d 385, certiorari denied 116 S.Ct. 474, 516 U.S. 974, 133 L.Ed.2d 404. Constitutional Law ⇨ 2704; Municipal Corporations ⇨ 712(7)

5. Summary judgment

Allegation, in city's notice of motion for judgment, that claim was for services of city sewage system and penalty for nonpayment to sanitary board for a specified period of time and that defendant was owner of property served and a specified sum was due by reason of a specified ordinance, when read in connection with verified itemized statement accompanying notice, was insufficient to state a claim based upon contract in absence of showing of relationship of sanitary board to sewage system, method of service and right of sanitary board to charge for service, and demurrer to notice was properly sustained. Code 1937, 16-13-15 et seq. *City of Beckley v. Craighead*, 1943, 24 S.E.2d 908, 125 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 same

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 three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. Each member shall give such bond, if any, as may be required by ordinance. The mayor or city manager shall act as chairman of the sanitary board, which shall elect a vice chairman from its members and shall designate a secretary and treasurer (but the secretary and the treasurer may be one and the same), who need not be a member or members of the sanitary board. The vice chairman, secretary and treasurer shall hold office as such at the will of the sanitary board.

The members of the sanitary board shall receive compensation for their services, either as a salary or as payments for meetings attended, as the governing body may determine, and shall be entitled to payment for their reasonable expenses incurred in the performance of their duties. The governing body shall fix the reasonable compensation of the secretary and treasurer in its discretion, and shall fix the amounts of bond to be given by the treasurer. All compensation, together with the expenses in this section referred to, shall be paid solely from funds provided under the authority of this article. The sanitary board shall have power to establish bylaws, rules and regulations for its own government.

Acts 1933, Ex. Sess., c. 25, § 18; Acts 1939, c. 96; Acts 1953, c. 146; Acts 1957, c. 137; 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 9, 16 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 contemplated plan of erecting sewage disposal plant. Acts 1933, 1st Ex.Sess., c. 25, as amended by Acts 1933, 2d Ex.Sess., c. 48. *Bernard v. City of Bluefield*, 1936, 186 S.E. 298, 117 W.Va. 556. Municipal Corporations ☞ 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, (but not both) to be appointed to board. 52 W.Val Op.Atty.Gen. 217 (February 9, 1967) 1967 WL 93382.

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 supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer services, and power of Commission to supervise

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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 works (in this section called the owner), is hereby authorized to contract with one or more other municipal corporations or political subdivisions within the state (in this section called the lessee), and such lessees are hereby authorized to enter into contracts with the owners, for the service of such works to such lessees and their inhabitants, but only to the extent of the capacity of the works without impairing the usefulness thereof to the owners, upon such terms and conditions as may be fixed by the boards and approved by ordinances of the respective contracting parties: Provided, That no contract shall be made for a period of more than forty years or in violation of the provisions of said ordinance authorizing bonds hereunder or in violation of the provisions of said trust indenture.

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

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

Acts 1933, Ex. Sess., c. 25, § 19; Acts 1981, 1st Ex. Sess., c. 2; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations Ⓒ328.
Westlaw Topic No. 268.

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

§ 16-13-20. 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.

§ 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.

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

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

municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

The jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

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

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

Acts 1949, c. 93; Acts 1961, c. 107; Acts 1980, c. 59; Acts 1981, 1st Ex. Sess., c. 2; Acts 1986, c. 118.

Library References

Municipal Corporations Ⓒ864(3).
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1583 to
1585, 1587.

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. C.J.S. Municipal Corporations §§ 1027 to 1029.
 Westlaw Topic No. 268.

§ 16-13-22c. Refunding bonds

Any municipality is authorized to issue refunding revenue bonds to refund, pay or discharge all or any part of its outstanding revenue bonds, including interest thereon, if any, in arrears or about to become due. The relevant provisions in this article pertaining to revenue bonds shall be equally applicable

in the authorization and issuance of refunding revenue bonds, including their terms and security, the ordinance, the trust indenture, rates, or other aspects of the bonds.

Acts 1949, c. 93.

Library References

Municipal Corporations §913.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to 1648, 1651.

§ 16-13-22d. Subordination of bonds

Notwithstanding any other provisions to the contrary in this article, any municipality authorizing the issuance of bonds under this article in an effort to aid in the abatement or reduction of the pollution of any waters or streams may provide in the ordinance authorizing the issuance of the bonds and in any trust indenture pertaining thereto that such bonds, or any additional bonds that may thereafter be issued to extend or improve the works, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to the payment of principal and interest and the security thereof, to such other bonds as are designated in the ordinance.

Acts 1949, c. 93.

Library References

Municipal Corporations §950(15).
Westlaw Topic No. 268.

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

§ 16-13-22e. Operating contract

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

Acts 1955, c. 132.

Library References

Municipal Corporations §328.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1027 to 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 the moneys, revenues and other income of such municipality derived from such

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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.

§ 16-13-22g. Covenants with bondholders

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

(a) The purpose or purposes to which the proceeds of sale of such bonds, or 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;

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

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

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

(f) The manner and terms upon which all bonds and other obligations issued hereunder may be declared immediately due and payable upon the happening

of a default in the payment of the principal of or interest thereon, or in the performance of any covenant or agreement with bondholders, and the manner and terms upon which defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed;

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

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

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

(j) Such other additional covenants as shall be considered necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding 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 §§ 1684 to
1686, 1697.

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

This article, shall, without reference to any other statute, be deemed full authority for the construction, acquisition, improvement, equipment, maintenance, operation and repair of the works herein provided for and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition or election or other or further proceeding in respect to the construction or acquisition of the works or to the issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to such construction or acquisition or to the issuance or sale of such bonds shall be required except such as are prescribed by this

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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 the municipal bond commission by expending and paying the costs and expenses of construction and operation in the manner as provided by said ordinance.

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

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

After introduction of the ordinance fixing rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of rates, fees or charges, shall be given by publication of notice as a Class II-O legal advertisement in compliance with the provisions of article three, 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 such municipal corporation in a civil action in the name of the municipality.

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

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

Note 1

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

West's
**Annotated Code
of West Virginia**

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

Chapter 16

2008
Cumulative Annual Pocket Part

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installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: *Provided*, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: *Provided, however*, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: *Provided further*, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding six thousand dollars per year, shall be paid from the fund to any university or college in this state or to any trade or vocational school or other entity in this State approved by the board to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under rules provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

Acts 2007, c. 119, eff. June 7, 2007; Acts 2008, c. 190, eff. June 7, 2008.

§ 16-5V-32. Effective date; report to Joint Committee on Government and Finance; special starting date for benefits

(a) The provisions of this article become effective the first day of January, two thousand eight: *Provided*, That no payout of any benefits may be made to any person prior to the first day of January, two thousand eleven: *Provided, however*, That emergency medical services officers who retire due to a duty disability pursuant to this article may begin receiving the benefits at the rate and in the amount specified in this article from this fund after the thirtieth day of June, two thousand eight: *Provided further*, That until the thirtieth day of June, two thousand eight, those emergency medical services officers who retire due to a duty disability pursuant to this article may draw benefits from this fund at the rate and in the amount set forth in section twenty-five, article ten, chapter five of this code.

(b) During the 36-month period before the payout of benefits begins, the Joint Committee on Government and Finance shall cause an interim study or studies to be conducted on the potential effects of the implementation of this retirement system, including, but not limited to, potential funding mechanisms to provide health insurance coverage for retirees in the fifty to fifty-five age group: *Provided*, That after the effective date of this provision, the Director of the Public Employees Insurance Agency shall propose a rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the funding of health insurance coverage for retirees under the plan provided in this article who are in the fifty to fifty-five year age group, which rule may be filed as an emergency rule: *Provided, however*, That any rule filed as an emergency rule pursuant to this subsection shall be refiled at the earliest opportunity as a legislative rule for review and promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.

Acts 2007, c. 119, eff. June 7, 2007; Acts 2008, c. 190, eff. June 7, 2008.

ARTICLE 13

SEWAGE WORKS AND STORMWATER WORKS

<p>Section 16-13-16. Rates for service; deposit required for new customers; forfeiture of</p>	<p>Section deposit; reconnecting deposit; tenant's deposit; change or readjust-</p>
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Section	Section
ment; hearing; lien and recovery; discontinuance of services.	16-13-23a. Additional powers of municipality to cease pollution.

§ 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

A governing body has the power and duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use of and the service rendered by:

(a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality or that in any way uses or is served by such works; and

(b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate or building that in any way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

(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 or stormwater facilities constructed, owned 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. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(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 the applicant's specific customer class, whichever is greater, to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, service may not be reconnected or reinstated by the governing body until another deposit equal to fifty dollars or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the governing body. After 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 Service 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 furnished remain unpaid for a period of twenty days after they become due, the user of the 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 Service Commission, shut off and 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 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 order issued by the Secretary of the Department of Environmental Protection or the Environmental Quality Board requiring the municipality to cease the pollution of any stream or waters is hereby authorized to establish and maintain, by ordinance, just and equitable rates, fees or charges for the use of the services and facilities of the existing municipal sewer system and/or stormwater system, 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.

(b) The 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, 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 Secretary of the Department of Environmental Protection or the Environmental Quality Board, and for the operation, maintenance and repair of the entire works and system.

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

(d) After the completion of the construction, the 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.

(e) 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.

(f) After introduction of the ordinance fixing rates, fees or charges, and before the same is finally enacted, notice of such hearing setting forth the proposed schedule of rates, fees or charges shall be given by publication of notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. 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.

(g) 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 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. 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.

(h) 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.

(i) If any rate, fee or charge is not paid within thirty 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 sanitary board of the municipality in a civil action in the name of the municipality.

(j) Any municipality exercising the powers given herein has the authority to construct, acquire, 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

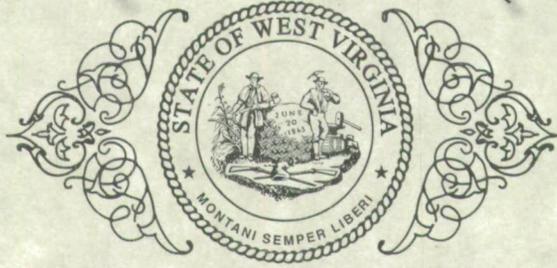
Section 16-13A-9. Rules; service rates and charges; discontinuance of service; required	Section water and sewer connections; lien for delinquent fees.
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§ 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer 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. The board shall establish rates, fees and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of the public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds under this article. The schedule of the rates, fees and charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial and public use of water and gas;

State of West Virginia



Certificate

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

THIS IS A TRUE COPY OF CHAPTER 22C, ARTICLE 2 OF THE WEST
VIRGINIA CODE, AND CHAPTER 22C ARTICLE 2 OF THE 2008
SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE
RECORDS OF THIS OFFICE.



*Given under my hand and the
Great Seal of the State of
West Virginia on*

April 6, 2009

Natalie E. Tennant

Secretary of State

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

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.

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

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.

West's
**Annotated Code
of West Virginia**



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

Chapters 22B to 23

2008
Cumulative Annual Pocket Part

Replacing 2007 Pocket Part supplementing 2006 Main Volume

Includes laws through the 2008 First Extraordinary Session



Mat #40748655

16

will be made available to such governmental agency and pay for such use or services such rentals or other charges as may be agreed to by such governmental agency and the authority.

Any governmental agency or agencies or combination thereof may cooperate with the authority in the acquisition or construction of a water development project and shall enter into such agreements with the authority as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties, including, without limitation, the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the authority to the extent necessary or appropriate for purposes of the issuance of water development revenue bonds by the authority. Any governmental agency may provide such contribution as is required under such agreements by the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection thereof, by the issuance of bonds or notes or by the levying of taxes or assessments and the issuance of bonds or notes in anticipation of the collection thereof and by the payment of such appropriated money or the proceeds of such bonds or notes to the authority pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote of the electors in an election held for the purpose of issuing bonds to provide funds to acquire, construct or equip, or provide real estate and interests in real estate for a public water facility, stormwater system or wastewater facility, whether or not the governmental agency at the time of such an election had the authority to pay the proceeds from such bonds or notes issued in anticipation thereof to the authority as provided in this section, may issue such bonds or notes in anticipation of the issuance thereof and pay the proceeds thereof to the authority in accordance with an agreement between such governmental agency and the authority: *Provided*, That the legislative authority of the governmental agency finds and determines that the water development project to be acquired or constructed by the authority in cooperation with such governmental agency will serve the same public purpose and meet substantially the same public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.

Acts 1994, c. 61; Acts 2008, c. 203, eff. June 5, 2008.

ARTICLE 2

WATER POLLUTION CONTROL REVOLVING FUND ACT

Section

22C-2-1. Definitions.

22C-2-5. Collection of money due to the fund.

§ 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 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

<p>Environmental law, Clean water, dams, discharge potential, state certification requirement under</p>	<p>Clean Water Act, see S.D. Warren Co. v. Maine Bd. of Environmental Protection, 2006, 126 S.Ct. 1843.</p>
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§ 22C-2-2. 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

<p>Environmental law, Clean water, dams, discharge potential, state certification requirement under</p>	<p>Clean Water Act, see S.D. Warren Co. v. Maine Bd. of Environmental Protection, 2006, 126 S.Ct. 1843.</p>
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§ 22C-2-5. Collection of money due to the fund

(a) 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

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November 1887. Filed November 16 1887.

body passing by R. E. Huddleston's place on the south
end of the 8th of the town of New Martins, Hancock
and Harbottle's place, close to a spring,
March 19 1877 passed through the town of New Martins
close to a residence belonging to Dr. Parker and to
the White Sulphur Springs Courthouse, and along the
S. E. corner of the lot by the highway, amounting in
length to 200 and 75 feet. One third of a square mile.

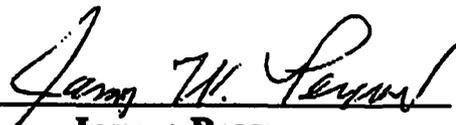
But it appearing to the satisfaction of the Court
that all the franchises of the town of New Martins
have been complied with by said bridge and that
consequently, the said bridge is a legal and authorized
structure the Court will decree to discharge all
the claims herein covered by said bridge,
and that the said bridge be maintained, and to
be added to the list of the town and under
the care of the town.

And it is ordered that if the said bridge is
not the bridge he and his heirs appointed
trustees and authorized to act as such and
to be held in said town as in and
to be held in said town.

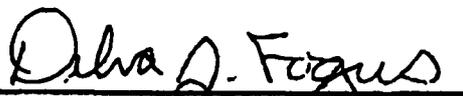
**CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"**

0001182

**I, James Perrow, Do Solemnly Swear That I Will Support
The Constitution Of The United States, And The Constitution
Of The State Of West Virginia, And That Of The City Of
White Sulphur Springs, And That I Will Faithfully Discharge
The Duties Of City Recorder To The Best Of My Skill And
Judgment, So Help Me God.**


James Perrow

July 2, 2007
Date


Debra J. Fogus, Mayor

July 2, 2007
Date

**CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"**

COO1

**I, Lynn Swann, Do Solemnly Swear That I Will Support The
Constitution Of The United States, And The Constitution Of
The State Of West Virginia, And That Of The City Of White
Sulphur Springs, And That I will Faithfully Discharge The
Duties Of City Councilperson To The Best Of My Skill And
Judgment, So, Help Me God.**



Lynn Swann

July 2, 2007
Date

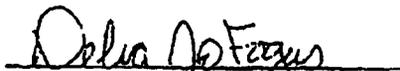


James Perrow, Recorder

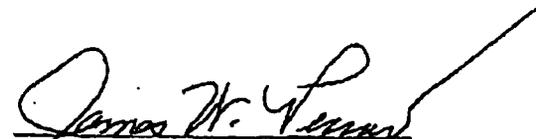
July 2, 2007
Date

CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"

I, Debra Jo Fogus, Do Solemnly Swear That I Will Support
The Constitution Of The United States, And The Constitution of This
State Of West Virginia, And That Of The City Of White Sulphur
Springs, And That I Will Faithfully Discharge The Duties of
Mayor To The Best Of My Skill And Judgement, So, Help Me God.


Debra Jo Fogus

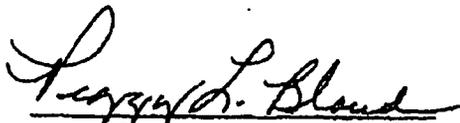
June 23, 2005
DATE


James Perrow

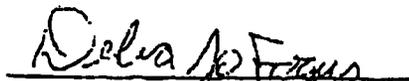
June 23, 2005
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CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"

I, Peggy Bland, Do Solemnly Swear That I Will Support
The Constitution Of The United States, And The Constitution of This
State Of West Virginia, And That Of The City Of White Sulphur
Springs, And That I Will Faithfully Discharge The Duties of
City Recorder. To The Best Of My Skill And Judgement, So, Help
Me God.


Peggy Bland
Peggy Bland

June 23, 2005
DATE


Debra Jo Fogus, Mayor
Debra Jo Fogus, Mayor

June 23, 2005
DATE

CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"

I, Chris Hanna, Do Solemnly Swear That I Will Support
The Constitution Of The United States, And The Constitution of This
State Of West Virginia, And That Of The City Of White Sulphur
Springs, And That I Will Faithfully Discharge The Duties of
City Councilperson To The Best Of My Skill And Judgement,
So, Help Me God.

Chris Hanna
Chris Hanna

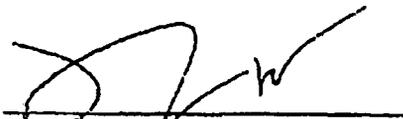
June 23, 2005
DATE

Debra Jo Fogus
Debra Jo Fogus, Mayor

June 23, 2005
DATE

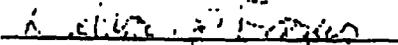
**CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"**

**I, Mike Honaker, Do Solemnly Swear That I Will Support
The Constitution Of The United States, And The Constitution of This
State Of West Virginia, And That Of The City Of White Sulphur
Springs, And That I Will Faithfully Discharge The Duties of
City Councilperson To The Best Of My Skill And Judgement,
So, Help Me God.**



Mike Honaker

June 23, 2005
DATE



Debra Jo Fogus, Mayor

June 23, 2005
DATE

CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"

I, Linda Shortridge, Do Solemnly Swear That I Will Support
The Constitution Of The United States, And The Constitution of This
State Of West Virginia, And That Of The City Of White Sulphur
Springs, And That I Will Faithfully Discharge The Duties of
City Councilperson To The Best Of My Skill And Judgement,
So, Help Me God.

Linda Shortridge
Linda Shortridge

June 23, 2005
DATE

Debra Jo Fogus
Debra Jo Fogus, Mayor

June 23, 2005
DATE

*Revised
July 28, 1986*

**ARTICLE 135
Sanitary Board**

- | | | | |
|--------|--|--------|--------------------------------|
| 135.01 | Created; powers and duties. | 135.04 | Bond required. |
| 135.02 | Membership and officers of Board; term; salaries and compensation. | 135.05 | Powers, duties and functions. |
| 135.03 | Officers. | 135.06 | Bylaws, rules and regulations. |

CROSS REFERENCES

Powers and duties - see W. Va. Code 16-13-3 et seq.
 Composition of Board - see W. Va. Code 16-13-18
 Publication of financial statement - see W. Va. Code 16-13-18a

135.01 CREATED; POWERS AND DUTIES.

There is hereby created a Sanitary Board of the City, having such powers, duties and functions as hereinafter set forth and also such other and additional powers, duties and functions as may be prescribed by ordinance or resolution of Council, including without limitation those which may be enacted or adopted in connection with or relating to the construction and operation of the City sewage system and works and the acceptance of grants or loans of money, including funds derived from the issuance and sale of sewer revenue bonds. (Passed 7-28-86)

135.02 MEMBERSHIP AND OFFICERS OF BOARD; TERM; SALARIES AND COMPENSATION.

(a) The membership of the Board shall be composed of the Mayor and two other persons appointed by Council from time to time. During any construction period of the works and until the final completion and acceptance thereof one of such persons shall be registered under the applicable laws of the State as a professional engineer, and such engineer member need not be, but the other person appointed as a member shall be, a resident of the City. When the engineer member is no longer required to be a member of the Board, he may be succeeded by a resident of the City who is not an engineer. Except for the Mayor, no officer or employee of the City, whether holding a paid or unpaid position or office, shall be eligible for appointment to the Board until at least one year after the expiration of the term of his public office or employment and the Mayor, after the termination of his election as such, shall be likewise ineligible for such appointment to the Board for such one year period thereafter; provided, that other members of the Board shall be eligible for reappointment to the Board.

(b) The term of the Mayor as a member of the Board shall be coextensive with his term of office as Mayor, and the other members shall each serve for a term of three years and until their respective successors are appointed and qualified. Vacancies shall be filled for an unexpired term in the same manner as the original appointment.

(c) Each member of the Board shall receive such compensation for his services, either as a salary or as payments for meetings attended, as Council may from time to time determine and fix by resolution duly adopted, and the members of the Board shall be further entitled to payment for their reasonable expenses incurred in the performance of their duties, all such payments of compensation and expenses to be made solely from funds available to the Board relating to the sewage works of the City.
(Passed 7-28-86)

135.03 OFFICERS.

The Mayor shall act as chairman of the Sanitary Board, which shall elect a vice chairman from its members and shall designate a secretary and treasurer, who may be one and the same person, neither of whom need be a member of the Board. All officers of the Board except the chairman shall hold office as such at the will of the Board.
(Passed 7-28-86)

135.04 BOND REQUIRED.

The Sanitary Board shall require every person, excluding a depository, having custody of, and opportunity to disburse, funds of the Board or of the City relating to the sewage works, to give bond, payable to the City, conditioned upon the faithful performance of their respective official duties and the faithful accounting for all such funds and otherwise conditioned as required by law, in an amount at all times at least equal to the total amount of such funds so in custody at any one time, with corporate surety approved by the Recorder of the City. The treasurer of the Board shall be covered by such Board in the amount as aforesaid. The premium on all such bonds shall be paid by the Board. (Passed 7-28-86)

135.05 POWERS, DUTIES AND FUNCTIONS.

(a) The construction, acquisition, improvement, equipment, custody, administration, operation and maintenance of the sewage collection, treatment and disposal works ("works" is hereby defined as a works for the collection and/or treatment, purification and disposal of sewage, in its entirety or any integral part thereof) and the collection of revenues therefrom for the service rendered thereby shall be under the supervision and control of the Sanitary Board.

(b) The board shall have all of the powers, duties and functions as are prescribed for such boards under the provisions of West Virginia Code Article 16-13 and, without limiting the generality of the foregoing, the Board shall have the power and shall take all steps and proceedings and 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 may be required in connection therewith, shall be approved by Council before it 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 powers, duties and functions of the Board shall be paid solely from funds provided for, or derived from the construction and operation of such works, and the Board shall not exercise or carry out any authority or power herein given it so as to bind the Board or the City beyond the extent to which moneys shall have been, or may be, so provided. No contract or agreement with any contractor or contractors for labor or material, exceeding in amount the sum of one thousand dollars (\$1,000), shall be made without advertising for bids, which bids shall be publicly open and the award made to the best bidder, with power in the board to reject any or all bids. After the construction, installation and completion of the works, or the acquisition thereof, the Board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the Board may deem expedient, if funds therefor be available, or are made available, for such purpose, and shall establish rules and regulations for the use and operation of the works, and of other sewers and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof. All public ways or public works damaged or destroyed by the Board in carrying out its authority under this article shall be restored or repaired by the Board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds lawfully available to the Board for such purpose.

(c) All necessary preliminary expenses actually incurred by the Board 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 City sewer revenue bonds or the receipt of other funds for the purposes of the works, may be met and paid in the following manner: The Board may from time to time certify such items of expense to the City Treasurer, directing him to pay the several amounts thereof, and thereupon the City Treasurer shall at once draw a warrant or warrants upon the funds of the City, which warrant or warrants shall be paid out of the General Fund of the City not otherwise appropriated, without a special appropriation being made therefor by Council; or, in case there are no general funds of the City not otherwise appropriated, the City Treasurer shall recommend to Council the temporary transfer from other funds of the City of a sufficient amount to meet such items of expense, or the making of a temporary loan for such purpose, and Council 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 the Municipality; provided, that the fund or funds of the City from which such payments are made shall be fully reimbursed and repaid by the Board out of the first proceeds available to it for the purposes of such works, 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 the City sewer revenue bonds, or other funds made available for the purpose of such works until the same has been repaid as herein provided.

(d) The Board shall cause to be prepared and published in the manner and at the times as prescribed by West Virginia Code 16-13-18a a financial statement of the Board. (Passed 7-28-86)

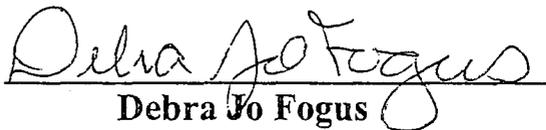
135.06 BYLAWS, RULES AND REGULATIONS.

The Board shall have the power to establish bylaws, rules and regulations for its own government and shall discharge its duties in conformity with all applicable laws, ordinances and regulations, including any agreements with agencies of the United States of America or the State of West Virginia. (Passed 7-28-86)

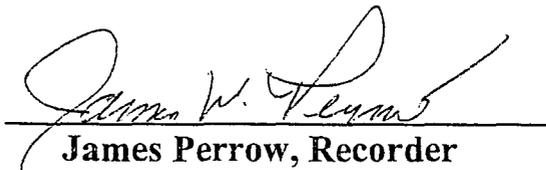
CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"

0001181

I, Debra Jo Fogus, Do Solemnly Swear That I Will Support
The Constitution Of The United States, And The Constitution
Of The State Of West Virginia, And That Of The City Of
White Sulphur Springs, And That I Will Faithfully Discharge
The Duties Of Mayor To The Best Of My Skill And Judgment,
So, Help Me God.


Debra Jo Fogus

July 2, 2007
Date

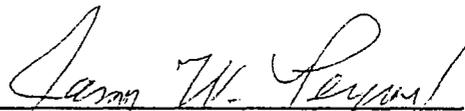

James Perrow, Recorder

July 2, 2007
Date

CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"

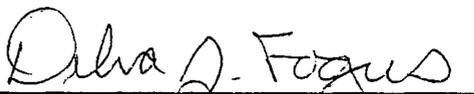
0001152

I, James Perrow, Do Solemnly Swear That I Will Support
The Constitution Of The United States, And The Constitution
Of The State Of West Virginia, And That Of The City Of
White Sulphur Springs, And That I Will Faithfully Discharge
The Duties Of City Recorder To The Best Of My Skill And
Judgment, So Help Me God.



James Perrow

July 2, 2007
Date



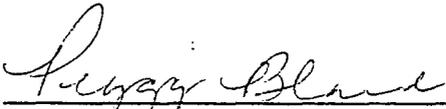
Debra J. Fogus, Mayor

July 2, 2007
Date

CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"

0001180

I, Peggy Bland, Do Solemnly Swear That I Will Support The
Constitution Of The United States, And The Constitution Of
The State Of West Virginia, And That Of The City Of White
Sulphur Springs, And That I Will Faithfully Discharge The
Duties Of City Councilperson To The Best Of My Skill And
Judgment, So, Help Me God.



Peggy Bland

July 2, 2007
Date



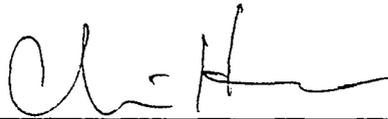
James Perrow, Recorder

July 2, 2007
Date

CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"

0001172

I, Chris Hanna, Do Solemnly Swear That I Will Support
The Constitution Of The United States, And The Constitution
Of The State Of West Virginia, And That Of The City Of
White Sulphur Springs, And That I Will Faithfully Discharge
The Duties Of City Councilperson To The Best Of My Skill
And Judgment, So Help Me God.



Chris Hanna

July 2, 2007

Date



James Perrow, Recorder

July 2, 2007

Date

CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"

0001185

I, Mike Honaker, Do Solemnly Swear That I Will Support
The Constitution Of The United States, And The Constitution
Of The State Of West Virginia, And That Of The City Of
White Sulphur Springs, And That I Will Faithfully Discharge
The Duties Of City Councilperson To The Best Of My Skill
And Judgment, So Help Me God.



Mike Honaker

July 2, 2007
Date



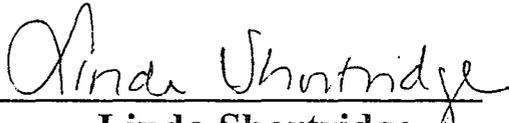
James Perrow, Recorder

July 2, 2007
Date

CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"

00019773

I, Linda Shortridge, Do Solemnly Swear That I Will Support
The Constitution Of The United States, And The Constitution
Of The State Of West Virginia, And That Of The City Of
White Sulphur Springs, And That I Will Faithfully Discharge
The Duties Of City Councilperson To The Best Of My Skill
And Judgment, So Help Me God.



Linda Shortridge

July 2, 2007
Date



James Perrow, Recorder

July 2, 2007
Date

CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"

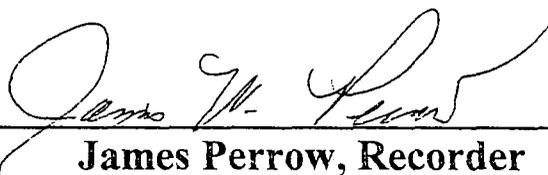
COO1177

I, Lynn Swann, Do Solemnly Swear That I Will Support The
Constitution Of The United States, And The Constitution Of
The State Of West Virginia, And That Of The City Of White
Sulphur Springs, And That I will Faithfully Discharge The
Duties Of City Councilperson To The Best Of My Skill And
Judgment, So, Help Me God.



Lynn Swann

July 2, 2007
Date



James Perrow, Recorder

July 2, 2007
Date

0000306

CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"

I, Amelia (Amy) McClure, Do Solemnly Swear That I Will
Support The Constitution Of The United States, And The
Constitution Of This State Of West Virginia, And That Of The
City Of White Sulphur Springs, And That I Will Faithfully
Discharge The Duties Of Sanitary Board Member To The Best
Of My Skill And Judgment, So, Help Me God.

Amelia H McClure
Amelia (Amy) McClure

July 10, 2007
Date

Debra J. Fogus
Debra J. Fogus, Mayor

July 10, 2007
Date

CITY OF
WHITE SULPHUR SPRINGS
"OATH OF OFFICE"

I, David Dent, Do Solemnly Swear That I Will Support The Constitution
Of The United States, And The Constitution Of This State Of West
Virginia, And That Of The City Of White Sulphur Springs, And That I Will
Faithfully Discharge The Duties Of Sanitary Board Member To The Best
Of My Skill And Judgment, So, Help Me God.

David Dent
David Dent

4-1-08
Date

Debra Fogus
Debra J. Fogus, Mayor

4-1-08
Date

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

Entered: December 12, 2008

CASE NO. 08-0707-S-CN

FINAL

1/1/2009

CITY OF WHITE SULPHUR SPRINGS

Application for a certificate of convenience and necessity to renovate and replace its sewer plant and collection system in Greenbrier County.

RECOMMENDED DECISION

On May 2, 2008, the City of White Sulphur Springs (City), a public sewer utility, filed an application with the Public Service Commission of West Virginia under *West Virginia Code (Code)* §24-2-11 for a certificate of public convenience and necessity to renovate and replace its sewer treatment plant and collection system in Greenbrier County. The City originally estimated that the project would cost approximately \$18,500,000, to be funded with a \$4,000,000 loan from the West Virginia Infrastructure and Jobs Development Council (IJDC), bearing an annual interest rate of 0.5% for a term of 30 years, and from tax increment financing (TIF) in the amount of \$14,600,000. The project will not require a rate increase.

On May 2, 2008, the Commission required that the City publish the Notice of Filing once in a newspaper duly qualified by the Secretary of State, published and generally circulated in Greenbrier County, providing a 30-day protest period. The Notice of Filing also provided that, if no protests were received within the 30-day protest period, the Commission may waive formal hearing and grant the certificate based upon its review of the evidence submitted with the application. On July 25, 2008, the City submitted a publication affidavit showing that the Notice of Filing was published on May 14, 2008, in *The West Virginia Daily News*, a newspaper published and generally circulated in Greenbrier County. The 30-day protest period expired on June 13, 2008. No one protested the application.

By the May 16, 2008 Referral Order, the Commission referred this case to the Division of Administrative Law Judges (ALJ Division) for decision on or before September 15, 2008, if no protest was filed, or by December 1, 2008, if the matter was protested.

On June 3, 2008, Staff Attorney Ronald E. Robertson, Jr., submitted the Initial Joint Staff Memorandum, attaching the May 27, 2008 Initial Internal Memorandum from Utilities Analyst Karen

L. Buckley, Water and Wastewater Division, and from Technical Analyst Lisa Bailey, Engineering Division, indicating that, once it had completed its investigation, Commission Staff would submit a final substantive recommendation. Commission Staff requested that the City furnish specified information and documentation so that Staff can properly analyze the application and make a substantive recommendation.

Responding to all of the above, by the July 22, 2008 Procedural Order, the Administrative Law Judge (ALJ) required that the City submit the publication affidavit showing that the Notice of Filing had been published as previously directed.

Responding to all of the above, by the July 30, 2008 Order Confirming September 15, 2008 Decision Due Date, the ALJ confirmed that the decision due date in this matter, since it was unprotested, was September 15, 2008. Accordingly, the ALJ directed that Commission Staff submit its final recommendation no later than August 8, 2008, to allow time for a hearing, if needed.

On July 31, 2008, the City moved that the Commission toll the statutory deadline by 120 days and extend the ALJ's decision due date, since the City required additional time to secure financing.

Also on July 31, 2008, Staff Attorney Robertson submitted the Further Joint Staff Memorandum, attaching the July 30, 2008 Interim Memorandum from Utilities Analyst Buckley and Technical Analyst Bailey, indicating, among other things, that, while the City had obtained a financing package totaling approximately \$18,500,000, the projected total cost for the project had increased to approximately \$21,600,000.

By the August 22, 2008 Procedural Order, the Commission granted the City's motions to toll the statutory deadlines and the ALJ's recommended decision due dates, since the City needed additional time to secure financing for the project now that the projected cost would be approximately \$21,600,000. The Commission directed that Commission Staff file its report no later than December 8, 2008, and that the ALJ enter his written recommended decision no later than January 13, 2009.

Responding to all of the above, by the October 9, 2008 Order Adopting Procedural Schedule, the ALJ held that, since this matter is unprotested, the only need for a hearing would be if Commission Staff and the City could not agree on the facts or if the parties otherwise develop a dispute which must be resolved through the hearing process. The October 9, 2008 Order also held that no public notice of hearing is needed. Due to the tight time frame between Staff's filing date and the ALJ's decision date, the ALJ adopted a procedural schedule to process and resolve this matter, including a Friday, December 19, 2008 hearing date.

On December 10, 2008, Staff Attorney Ronald E. Robertson, Jr., filed the Final Joint Staff Memorandum, attaching the December 10, 2008 Final Internal Memorandum from Utilities Analyst Buckley and Technical Analyst Bailey. Together, these Memoranda comprise Commission Staff's final substantive recommendation in this matter. Staff reported that the total project, comprised of additions, modifications, replacements and improvements to the City's wastewater treatment plant

and collection system, would cost approximately \$21,600,000, and that the financing has been modified to include a \$4,000,000 State Revolving Fund (SRF) loan, bearing 0% interest and a 0.5% administrative fee for a term of 30 years, and, effectively, a \$17,600,000 grant from the Greenbrier County Commission in the form of TIF bonds issued by the Greenbrier County Commission, i.e., the TIF funds will not cause the City to incur any additional debt service. The project will not require a rate increase. The IJDC has approved the project, designated as Application No. 2003S-731. The City has obtained commitments for all of the project financing.

Staff reported that the application includes an Agreement between the City, the Sanitary Board of the City of White Sulphur Springs (Board) and CSX Hotels, Inc. (CSX). CSX operates The Greenbrier Resort (The Greenbrier). The agreement will supplant a 1987 agreement which stated that the City would construct a wastewater treatment plant to serve The Greenbrier and the City. The Greenbrier is a contract commercial customer of the City. The new agreement will be effective for 30 years from the date that the City begins making payments on the IJDC loan. The new Agreement stipulates that The Greenbrier is not required to pay any portion of the costs of the upgrades included in the project.

The City currently operates a 1,600,000 gallons per day treatment plant that treats sewage from the City and The Greenbrier. The sewage is collected through gravity flow lines. The current treatment facility includes a 16-inch bypass line that diverts raw sewage directly to Howard Creek when the flow is too great to be handled by the City's existing treatment plant. This is a violation which the Department of Environmental Protection (DEP) has cited. The City is operating under a September 2, 2003 consent order from the DEP because it violated its National Pollutant Discharge Elimination System (NPDES) permit 88 times between February 2001 and March 2003. The existing treatment plant is not capable of treating the sewage generated by the City and The Greenbrier and it cannot be modified to accept the flows, especially during wet weather. At least 500 new homes are planned for construction in the near future which will be served by the City's sewer system. The project includes upgrading the existing treatment plant and adding a new treatment plant designed to treat an additional 2,500,000 gallons per day. Many other deficiencies exist in the City's sewage collection system, including leaking manholes, connection of roof drains to the sanitary sewer system and many broken lines that cannot be repaired. Also, the collection system has construction flaws and inadequate pumping stations which must be corrected and replaced. The existing inadequate facilities provide improper treatment and constitute a public and environmental health risk. The project is designed to address all of these shortcomings.

In addition to the larger treatment plant, the project includes replacement of old lines, manholes and pumping stations, in addition to providing new lines that eventually will allow the City to accommodate the new customers expected due to housing and other growth in the immediate area. The project will allow the City to properly and lawfully serve all of its existing customers and will accommodate the expected growth. The new plant will meet the City's NPDES permit requirements. The project plans, specifications and construction documents do not violate the Commission *Rules for the Government of Sewer Utilities (Sewer Rules)*. After review of the plans and specifications, the West Virginia Department of Health and Human Resources, Bureau for Public Health,

Environmental Engineering Division approved the project by issuing Permit No. 17,695. Staff recommended approving the project plans without specifically approving the plans and specifications. The City has secured most of the major permits and approvals required by other governmental agencies. Staff believes that the City will be able to obtain all necessary permits prior to commencing construction. Staff recommended that the City employ an additional treatment plant operator in order to address all of the deficiencies cited by the DEP. Staff clarified that, while the project actually will not directly add any additional customers, it will accommodate the growth expected in the near future.

Staff opined that the estimated construction cost per customer of approximately \$11,485 is reasonable. The total cost of engineering is only about 8% of the total project cost, which Staff opined was not only reasonable, but somewhat lower than average. While the cost estimates for the project are reasonable, Staff commented that the project may not include enough contingency funding. Since the project has not been bid, Staff's opinion is based solely on the estimates the City's project engineering firm has provided. If the bids come in higher than projected, the City will need to obtain separate approval to obtain more financing or change the scope of the project. Staff opined that operation and maintenance (O&M) expenses would increase approximately \$173,023 due to the project, comprised chiefly of additional expenses for electric power, personnel and chlorination. Staff opined that the proposed vertical loop reactor treatment plant and gravity collection system proposed by the project is the most cost-effective alternative. Staff opined that the public convenience and necessity require the project.

Staff noted that, on December 11, 2008, the Commission received a letter from Greg Isaacs, Vice President of Crews and Associates, the underwriter for the TIF bonding mechanism, stating, "The proceeds of the TIF Bonds and monies in the TIF Fund will be made available to the City by the County Commission through a project agreement, in which the funds are essentially treated as a grant to the City for the purposes of constructing the project. The City has no obligations to make any of the debt service payments on the TIF bonds." The TIF District, created in 2004, already has approximately \$6,000,000 on hand in the TIF Fund for the project. The underwriters opined that the TIF bonds can be issued in an amount sufficient to cover the difference in the \$6,000,000 on hand and the amount above the IJDC loan needed to finance the project. The City will incur approximately \$133,333 in debt service on the SRF loan, plus a 10% reserve account of \$13,333 and a renewal and replacement reserve equal to 2.5% of the operating revenues or approximately \$27,371. The annual expenditures attributable to the project totals approximately \$341,348.

Staff recommended that the Commission grant the application and approve the financing and the Staff-recommended level of operations. If the scope of the project changes, the City needs separate Commission approval. If the project's scope or financing changes the rates, the City needs separate Commission approval. However, if changes in project costs or financing occur which do not affect rates, the City needs to submit a verification of this from a certified public accountant. The City must file its engineer's certified tabulation of bidding for all contracts or vendor bids associated with the project within ten days of opening the bids. The City must file a certificate of substantial completion with the Commission for all contracts or vendor bids within ten days of receiving the certificate. The City needs to file copies of the approved permits from the State Historical

Preservation Office, the Wetlands and the United States Fish and Wildlife agencies. Any changes in the project scope or design which requires approval of the West Virginia Bureau of Public Health also requires separate approval from the Commission. Finally, the City must submit a letter from the Greenbrier County Commission verifying the funds held in the TIF account.

By Order Canceling Hearing issued on December 11, 2008, the ALJ canceled the procedural schedule adopted by the October 9, 2008 Order, including the Friday, December 19, 2008 hearing.

DISCUSSION

Having considered all of the above, since no dispute remains to be resolved in this proceeding, as evidenced by the City's response to Staff's final recommendation, and since the parties have waived their rights under *West Virginia Code* §24-1-9(b) to file proposed findings of fact and conclusions of law, or briefs, in this proceeding, or to a hearing, the ALJ holds that this matter is ready for a final decision without the need for a hearing.

The ALJ holds that, since the City properly published the Notice of Filing on May 14, 2008, and the 30-day protest period expired without a protest being filed; since the total project, comprised of additions, modifications, replacements and improvements to the City's wastewater treatment plant and collection system, would cost approximately \$21,600,000, and all financing for the project has been secured; since the project will not require a rate increase; since the IJDC approved the project; since the City's existing 1,600,000 gallons per day treatment plant is not sufficient to treat the existing flow and includes a 16-inch bypass line that diverts raw sewage directly to Howard Creek when the flow is too great to be handled by the City's existing treatment plant; since this is a DEP violation, evidenced by a September 2, 2003 consent order from the DEP citing 88 NPDES permit violations by the City between February 2001 and March 2003; since the existing treatment plant is not capable of treating the sewage generated by the City and The Greenbrier and it cannot be modified to accept the flows, especially during wet weather; since at least 500 new homes are planned for construction in the near future which will be served by the City's sewer system; since the project includes upgrading the existing treatment plant and adding a new treatment plant designed to treat an additional 2,500,000 gallons per day; since the project will also address many other deficiencies in the City's sewage collection system, including leaking manholes, connection of roof drains to the sanitary sewer system and many broken lines that cannot be repaired; since the City's existing sewage collection system contains construction flaws and inadequate pumping stations which must be corrected and replaced; since the existing inadequate facilities provide improper treatment and constitute a public and environmental health risk; since the project is designed to address all of these shortcomings; since the project includes a major upgrade to the treatment plant, increasing its capacity by 2,500,000 gallons per day, and replacing old lines, manholes and pumping stations, in addition to providing new lines that eventually will allow the City to accommodate the new customers expected due to housing and other growth in the immediate area; since the project will allow the City to properly and lawfully serve all of its existing customers and will accommodate the expected growth; since the new plant will meet the City's NPDES permit requirements; since the project plans, specifications and construction documents do not violate the Commission *Sewer Rules*; since the

West Virginia Department of Health and Human Resources, Bureau for Public Health, Environmental Engineering Division, approved the project by issuing Permit No. 17,695; since Staff recommended approving the project plans without specifically approving the plans and specifications. The City has secured most of the major permits and approvals required by other governmental agencies; since the City will be able to obtain all necessary permits prior to commencing construction; since Staff recommended that the City employ an additional treatment plant operator in order to address all of the deficiencies cited by the DEP; since the estimated construction cost per customer of approximately \$11,485 is reasonable; since the total engineering cost of about 8% of the total project cost is reasonable; and since the proposed vertical loop reactor treatment plant and gravity collection system proposed by the project is the most cost-effective alternative, the public convenience and necessity require the project. The ALJ will grant the application and the Staff-recommended level of operations.

Since the City has obtained commitment for funding for the total project cost of approximately \$21,600,000, comprised of a \$4,000,000 SRF loan, bearing 0% interest and a 0.5% administrative fee for a term of 30 years, and a \$17,600,000 grant from the Greenbrier County Commission in the form of TIF bonds issued by the Greenbrier County Commission, the ALJ will approve the financing.

Since the Agreement between the City, the Sanitary Board of the City of White Sulphur Springs and CSX Hotels, Inc., will supplant a 1987 agreement which stated that the City would construct a wastewater treatment plant to serve The Greenbrier and the City; since The Greenbrier is a contract commercial customer of the City; since the new agreement will be effective for 30 years from the date that the City begins making payments on the IJDC loan; since the new Agreement stipulates that The Greenbrier is not required to pay any portion of the costs of the upgrades included in the project; and since Commission Staff has recommended approving the new Agreement, the same will be approved.

The ALJ also will require the City to obtain separate Commission approval should the scope of the project change. If the project's scope or financing changes the rates, the City needs separate Commission approval. However, if changes in project costs or financing occur which do not affect rates, the City needs to submit a verification of this from a certified public accountant. The City must file its engineer's certified tabulation of bidding for all contracts or vendor bids associated with the project within ten days of opening the bids. The City must file a certificate of substantial completion with the Commission for all contracts or vendor bids within ten days of receiving the certificate. The City needs to file copies of the approved permits from the State Historical Preservation Office, the Wetlands and the United States Fish and Wildlife agencies. Any changes in the project scope or design which requires approval of the West Virginia Bureau of Public Health also requires separate approval from the Commission. Finally, the City must submit a letter from the Greenbrier County Commission verifying the funds held in the TIF account.

FINDINGS OF FACT

1. The City of White Sulphur Springs filed an application with the Commission under Code §24-2-11 for a certificate of public convenience and necessity to renovate and replace its sewer treatment plant and collection system in Greenbrier County. The City originally estimated that the project would cost approximately \$18,500,000, to be funded with a \$4,000,000 IJDC loan and from TIF financing in the amount of \$14,600,000. The project will not require a rate increase. (See, May 2, 2008 application).

2. The City submitted a publication affidavit showing that the Notice of Filing was published on May 14, 2008, in *The West Virginia Daily News*, a newspaper published and generally circulated in Greenbrier County. The 30-day protest period expired on June 13, 2008, and no one protested the application. (See, July 25, 2008 filing; Commission's file).

3. Staff reported that, while the City originally had obtained a financing package totaling approximately \$18,500,000, according to information furnished to Staff from the City, the estimated total cost for the project has increased to approximately \$21,600,000. (See, July 31, 2008 filing).

4. Commission Staff reported that the total \$21,600,000 project, approved by the IJDC and comprised of additions, modifications, replacements and improvements to the City's wastewater treatment plant and collection system, would be financed, as modified by the City, with a \$4,000,000 SRF loan, bearing 0% interest and a 0.5% administrative fee for a term of 30 years, and, effectively, with a \$17,600,000 grant from the Greenbrier County Commission in the form of TIF bonds issued by the Greenbrier County Commission, all of which has been formally committed and would not require a rate increase. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

5. The application includes an Agreement between the City, the Board and CSX, which operates The Greenbrier, which agreement will supplant a 1987 agreement that the City would construct a wastewater treatment plant to serve The Greenbrier and the City. The Greenbrier is a contract commercial customer of the City. The new agreement will be effective for 30 years from the date that the City begins making payments on the SRF loan. The new Agreement stipulates that The Greenbrier is not required to pay any portion of the costs of the upgrades included in the project. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

6. The City currently operates a 1,600,000 gallons per day treatment plant that treats sewage from the City and The Greenbrier. The sewage is collected through gravity flow lines. The current treatment facility includes a 16-inch bypass line that diverts raw sewage directly to Howard Creek when the flow is too great to be handled by the current treatment plant, which is a violation which the DEP has cited. The City is operating under a September 2, 2003 consent order from the DEP because it violated its NPDES permit 88 times between February 2001 and March 2003. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

7. The existing treatment plant is not capable of treating the sewage generated by the City and The Greenbrier and it cannot be modified to accept the flows, especially during wet weather. At least 500 new homes are planned for construction in the near future which will be served by the City's sewer system. The project includes upgrading the existing 1,600,000 gallons per day treatment plant and adding a new treatment plant designed to treat an additional 2,500,000 gallons per day. Many deficiencies exist in the City's sewage collection system, including leaking manholes, connection of roof drains to the sanitary sewer system and many broken lines that cannot be repaired. Also, the collection system has design and construction flaws, including inadequate pumping stations, which must be corrected and/or replaced. The existing inadequate facilities provide improper treatment and constitute a public and environmental health risk. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

8. In addition to increasing the capacity of the treatment plant, the project will replace old lines, manholes and pumping stations, and accommodate eventually adding new lines to serve new customers expected due to construction already planned. The project will allow the City to serve all of its existing customers and will accommodate the expected growth while satisfying the City's NPDES permit requirements. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

9. The project plans, specifications and construction documents do not violate the Commission *Sewer Rules*. The West Virginia Department of Health and Human Resources, Bureau for Public Health, Environmental Engineering Division approved the project by issuing Permit No. 17,695. Staff recommended approving the project plans without specifically approving the plans and specifications. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

10. The City has secured most of the major permits and approvals required by other governmental agencies. Staff believes that the City will be able to obtain all necessary permits prior to commencing construction. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

11. Staff recommended that the City employ an additional treatment plant operator in order to address all of the deficiencies cited by the DEP. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

12. Staff opined that the estimated construction cost per customer of approximately \$11,485 is reasonable. The total cost of engineering is only about 8% of the total project cost, which is somewhat lower than average. While the cost estimates for the project are reasonable, Staff commented that the project may not include enough contingency funding. Since the project has not been bid, Staff's opinion is based solely on the City's estimates. Should the bids come in higher than projected, the City will need to obtain separate approval to obtain more financing or change the scope of the project. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

13. Staff opined that O&M expenses would increase approximately \$173,023 due to the project, including additional expenses for electric power, personnel and chlorination. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

14. Staff opined that the proposed vertical loop reactor treatment plant and gravity collection system proposed by the project is the most cost-effective alternative. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

15. Staff opined that the public convenience and necessity require the project. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

16. Crews and Associates, the underwriter for the TIF bonds, related to Staff that, "The proceeds of the TIF Bonds and monies in the TIF Fund will be made available to the City by the County Commission through a project agreement, in which the funds are essentially treated as a grant to the City for the purposes of constructing the project. The City has no obligations to make any of the debt service payments on the TIF bonds." (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

17. The TIF District, created in 2004, already has approximately \$6,000,000 on hand in the TIF Fund for the project. The underwriters opined that the TIF bonds can be issued in an amount sufficient to cover the difference in the \$6,000,000 on hand and the amount above the SRF loan needed to finance the project. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

18. The City will incur approximately \$133,333 in debt service on the SRF loan, plus a 10% reserve account of \$13,333 and a renewal and replacement reserve equal to 2.5% of the operating revenues or approximately \$27,371. The annual expenditures attributable to the project totals approximately \$341,348. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

19. Staff recommended that the Commission grant the application and approve the financing and the Staff-recommended level of operations. Staff also recommended other conditions upon which the application should be granted. (See, Final Joint Staff Memorandum, with attachments, filed December 10, 2008).

CONCLUSIONS OF LAW

1. The public convenience and necessity require the proposed project.
2. The proposed financing for the project should be approved.
3. The project will not affect rates.

4. Should the scope, plans or financing for the project change, the City must obtain prior Commission approval before commencing construction. Changes in project costs do not require separate approval if those changes do not affect rates and the City submits an affidavit from a certified public accountant verifying that the rates will not be affected by such changes.

5. The City must obtain and furnish to the Commission a copy of all governmental and other permits required for the project prior to commencing construction.

6. The City must file a letter from the Greenbrier County Commission verifying the funds in the TIF account.

ORDER

IT IS, THEREFORE, ORDERED that the application for a certificate of public convenience and necessity filed with the Commission on May 2, 2008, by the City of White Sulphur Springs, pursuant to *West Virginia Code* §24-2-11, to add, modify, replace and improve the City's wastewater treatment plant and collection system, in Greenbrier County, be, and hereby is, granted.

IT IS FURTHER ORDERED that the proposed financing for the project, comprised of a \$4,000,000 State Revolving Fund loan, bearing 0% interest and a 0.5% administrative fee for a term of 30 years, and, effectively, a \$17,600,000 grant from the Greenbrier County Commission in the form of tax increment financing bonds issued by the Greenbrier County Commission, be, and hereby is, approved.

IT IS FURTHER ORDERED that the Agreement between the City of White Sulphur Springs, the Sanitary Board of White Sulphur Springs and CSX Hotels, Inc., which will supplant a 1987 agreement among those parties and will become effective upon the City making the first payment on the SRF loan, be, and hereby is, approved, as recommended by Commission Staff. No later than thirty (30) days from the date that this Recommended Decision becomes final, the City of White Sulphur Springs shall file a revised executed copy of the Agreement.

IT IS FURTHER ORDERED that, should the scope, plans or financing for the project change, the City of White Sulphur Springs must obtain prior Commission approval before commencing construction. Changes in project cost do not require separate approval if those changes do not affect rates and the Authority submits an affidavit from a certified public accountant to this effect.

IT IS FURTHER ORDERED that, within ten (10) days from the date the bids are tabulated, the City of White Sulphur Springs submit a copy to the Commission of the project bids for all contracts or vendor bids associated with the project, making the bids a part of the Commission's file in this case.

IT IS FURTHER ORDERED that, prior to commencing construction, the City of White Sulphur Springs file a copy with the Commission of all permits, certificates and other documentation required from other governmental agencies and authorities.

IT IS FURTHER ORDERED that, within ten (10) days of receipt of the certificate of substantial completion, the City of White Sulphur Springs notify the Commission when the project engineer has performed the substantial completion inspection and file with the Commission a copy of the certificate of substantial completion for all contracts or vendor bids associated with the project.

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

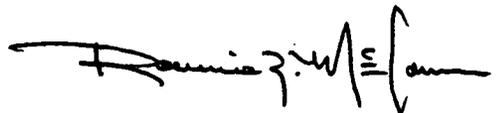
IT IS FURTHER ORDERED that this matter be, and hereby is, removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary serve a copy of this Recommended Decision upon the Commission by hand delivery and upon all parties of record by United States Certified Mail, return receipt requested.

Leave hereby is 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 Recommended Decision 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 Recommended Decision 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 recommended decision by filing an appropriate petition in writing with the Executive 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 recommended decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



Ronnie Z. McCann
Deputy Chief Administrative Law Judge

RZM:s
080707ad.wpd

West Virginia Infrastructure & Jobs Development Council

Public Members:
Kenneth Lowe, Jr.
Shepherdstown
Dwight Calhoun
Petersburg
Dave McComas
Prichard
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Morgantown

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Jefferson E. Brady, PE
Executive Director

Jefferson.Brady@verizon.net

February 6, 2008

The Honorable Debra Fogus
Mayor, City of White Sulphur Springs
34 West Main Street
White Sulphur Springs, West Virginia 24986

Re: City of White Sulphur Springs
Sewer Project 2003S-731

Dear Mayor Fogus:

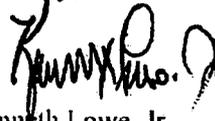
The West Virginia Infrastructure and Jobs Development Council (the "Council") has reviewed the City of White Sulphur Springs' (the "City") revised preliminary application regarding its proposed project to rehabilitate the collection system (the "Project").

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 revised preliminary application, the Infrastructure Council recommends that the City pursue a \$4,000,000 Clean Water State Revolving Fund loan to fund this project. Please contact the West Virginia 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,



Kenneth Lowe, Jr.

Enclosure

cc: Mike Johnson, P.E., DEP (w/o enclosure)
Region IV Planning & Development Council
Ghosh Engineers, Inc.

SRF-LP-1
(11/01/04)

LOAN AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND LOAN AGREEMENT (the "Loan 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 WHITE SULPHUR SPRINGS (C-544034/2003S-731)
(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, 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;

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, 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 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 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 Loan 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 Loan 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.

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 Loan Agreement as they are used.

ARTICLE II

The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the 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 Loan 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 Recipient As-Built Plans, 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 Loan 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.

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 Loan 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 Loan 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, 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 Loan Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the 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 Loan 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 Loan 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) 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; 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) 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;

(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 Loan 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 Loan 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 Loan Agreement.

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

5.4 The 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 Loan 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 Loan Agreement.

6.2 The Local Government hereby warrants and represents that all information provided to the Authority and DEP in this Loan Agreement, in the

Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority and DEP shall have the right to cancel all or any of their obligations under this Loan Agreement if (a) any representation made to the Authority and 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 Loan Agreement.

6.3 The Local Government hereby agrees to repay on or prior to the Date of Loan Closing any moneys due and owing by it to the Authority or any other lender for the planning or design of the Project, provided that such repayment shall not be made from the proceeds of the Loan.

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

6.5 Notwithstanding Section 6.4, the Authority and DEP may at any time, in their sole discretion, cause the rebate calculations prepared by or on behalf of the Local Government to be monitored or cause the rebate calculations for the Local Government to be prepared, in either case at the expense of the Local Government.

6.6 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.

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

ARTICLE VII

Miscellaneous

7.1 Schedules X and Y shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the 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 Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement, and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

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

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

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

7.6 By execution and delivery of this Loan 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 Loan 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; or

(iv) 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 Loan 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 Loan Agreement included in its budget. Non-appropriation or non-funding of the Loan shall not be considered an event of default under this Loan Agreement.

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

CITY OF WHITE SULPHUR SPRINGS

(SEAL)

By: Debra Fogus

Its: Mayor

Date: April 9, 2009

Attest:

James W. Lewis
Its: Recorder

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

By: Scott E. Muller

Its: Director

Date: April 9, 2009

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: [Signature]

Its: Executive Director

Date: April 9, 2009

Attest:

Diane L. Roy
Its: Secretary-Treasurer

{C1516928.1}

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 10th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.

EXHIBIT 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 Loan 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 firm¹ 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) as of the effective date thereof², the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xi) 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]

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

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

EXHIBIT 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. The Contractor shall comply with the Buy American provisions of the American Recovery and Reinvestment Act (ARRA) in accordance with final guidance from the EPA and OMB. Compliance can in no way violate international free trade agreements.

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 57th 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 loan agreement dated _____, _____, including all schedules and exhibits attached thereto (the "Loan 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 Loan Agreement. The Local Bonds are issued in the principal amount of \$_____, in the form of one bond, registered as to principal and interest to the Authority, with 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 Loan Agreement and incorporated in and made a part of the Local Bonds.

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

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

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

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

2. The Loan 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 Loan 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

Principal Amount of Local Bonds \$3,874,614
Purchase Price of Local Bonds \$3,874,614

The Local Bonds shall bear no interest. Commencing September 1, 2010, principal of the Local Bonds is payable quarterly, with an administrative fee of ½%. 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 and interest, if any, 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.

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: City of White Sulphur Springs Sewer Revenue Bonds, Series 1987 A (United States Department of Agriculture), dated March 3, 1988, issued in the original principal amount of \$3,500,000.

SCHEDULE Y

DEBT SERVICE SCHEDULE

	Period Ending	Principal	Interest	Debt Service
	6/1/09			
	9/1/09			
	12/1/09			
	3/1/10			
	6/1/10			
	9/1/10	32,289.		32,289.
	12/1/10	32,289.		32,289.
	3/1/11	32,289.		32,289.
	6/1/11	32,289.		32,289.
	9/1/11	32,289.		32,289.
	12/1/11	32,289.		32,289.
	3/1/12	32,289.		32,289.
	6/1/12	32,289.		32,289.
	9/1/12	32,289.		32,289.
	12/1/12	32,289.		32,289.
	3/1/13	32,289.		32,289.
	6/1/13	32,289.		32,289.
	9/1/13	32,289.		32,289.
	12/1/13	32,289.		32,289.
	3/1/14	32,289.		32,289.
	6/1/14	32,289.		32,289.
	9/1/14	32,289.		32,289.
	12/1/14	32,289.		32,289.
	3/1/15	32,289.		32,289.
	6/1/15	32,289.		32,289.
	9/1/15	32,289.		32,289.
	12/1/15	32,289.		32,289.
	3/1/16	32,289.		32,289.
	6/1/16	32,289.		32,289.
	9/1/16	32,289.		32,289.
	12/1/16	32,289.		32,289.
	3/1/17	32,289.		32,289.
	6/1/17	32,289.		32,289.
	9/1/17	32,289.		32,289.
	12/1/17	32,289.		32,289.
	3/1/18	32,289.		32,289.
	6/1/18	32,289.		32,289.
	9/1/18	32,289.		32,289.
	12/1/18	32,289.		32,289.
	3/1/19	32,289.		32,289.
	6/1/19	32,289.		32,289.
	9/1/19	32,289.		32,289.
	12/1/19	32,289.		32,289.
	3/1/20	32,289.		32,289.
	6/1/20	32,289.		32,289.
	9/1/20	32,289.		32,289.

	Period Ending	Principal	Interest	Debt Service
	12/1/20	32,289.		32,289.
	3/1/21	32,289.		32,289.
	6/1/21	32,289.		32,289.
	9/1/21	32,289.		32,289.
	12/1/21	32,289.		32,289.
	3/1/22	32,289.		32,289.
	6/1/22	32,289.		32,289.
	9/1/22	32,289.		32,289.
	12/1/22	32,289.		32,289.
	3/1/23	32,289.		32,289.
	6/1/23	32,289.		32,289.
	9/1/23	32,289.		32,289.
	12/1/23	32,288.		32,288.
	3/1/24	32,288.		32,288.
	6/1/24	32,288.		32,288.
	9/1/24	32,288.		32,288.
	12/1/24	32,288.		32,288.
	3/1/25	32,288.		32,288.
	6/1/25	32,288.		32,288.
	9/1/25	32,288.		32,288.
	12/1/25	32,288.		32,288.
	3/1/26	32,288.		32,288.
	6/1/26	32,288.		32,288.
	9/1/26	32,288.		32,288.
	12/1/26	32,288.		32,288.
	3/1/27	32,288.		32,288.
	6/1/27	32,288.		32,288.
	9/1/27	32,288.		32,288.
	12/1/27	32,288.		32,288.
	3/1/28	32,288.		32,288.
	6/1/28	32,288.		32,288.
	9/1/28	32,288.		32,288.
	12/1/28	32,288.		32,288.
	3/1/29	32,288.		32,288.
	6/1/29	32,288.		32,288.
	9/1/29	32,288.		32,288.
	12/1/29	32,288.		32,288.
	3/1/30	32,288.		32,288.
	6/1/30	32,288.		32,288.
	9/1/30	32,288.		32,288.
	12/1/30	32,288.		32,288.
	3/1/31	32,288.		32,288.
	6/1/31	32,288.		32,288.
	9/1/31	32,288.		32,288.
	12/1/31	32,288.		32,288.
	3/1/32	32,288.		32,288.
	6/1/32	32,288.		32,288.
	9/1/32	32,288.		32,288.
	12/1/32	32,288.		32,288.
	3/1/33	32,288.		32,288.

	Period Ending	Principal	Interest	Debt Service
92	6/1/33	32,288.		32,288.
93	9/1/33	32,288.		32,288.
94	12/1/33	32,288.		32,288.
95	3/1/34	32,288.		32,288.
96	6/1/34	32,288.		32,288.
97	9/1/34	32,288.		32,288.
98	12/1/34	32,288.		32,288.
99	3/1/35	32,288.		32,288.
100	6/1/35	32,288.		32,288.
101	9/1/35	32,288.		32,288.
102	12/1/35	32,288.		32,288.
103	3/1/36	32,288.		32,288.
104	6/1/36	32,288.		32,288.
105	9/1/36	32,288.		32,288.
106	12/1/36	32,288.		32,288.
107	3/1/37	32,288.		32,288.
108	6/1/37	32,288.		32,288.
109	9/1/37	32,288.		32,288.
110	12/1/37	32,288.		32,288.
111	3/1/38	32,288.		32,288.
112	6/1/38	32,288.		32,288.
113	9/1/38	32,288.		32,288.
114	12/1/38	32,288.		32,288.
115	3/1/39	32,288.		32,288.
116	6/1/39	32,288.		32,288.
117	9/1/39	32,288.		32,288.
118	12/1/39	32,288.		32,288.
119	3/1/40	32,288.		32,288.
120	6/1/40	32,289.		32,289.
		3,874,614.		3,874,614. *

*Plus \$2,441.79 one-half percent Administrative Fee paid quarterly. Total fee over life of loan is \$293,014.80.

ORDINANCE

AN ORDINANCE AMENDING AND RE-ENACTING ORDINANCES NO. 2001-101 and NO. 925.02 (a) OF THE CODIFIED ORDINANCES OF THE CITY OF WHITE SULPHUR SPRINGS WITH RESPECT TO INCREASING EXISTING RATES AND CHARGES FOR SEWER SERVICE AND WATER SERVICE.

WHEREAS, in order to protect the public health safety and welfare the City Council of White Sulphur Springs (Council) is aware that it is essential for the White Sulphur Springs Water and Sanitary Boards (Boards) to have annual revenues available to properly operate and maintain an improved and renovated sewage collection system and the wastewater treatment plant to serve with White Sulphur Springs and the surrounding area (The System)

WHEREAS, in order for the Boards to collect annual revenues necessary to pay for the upgrade, operation and maintenance expenses and the debt service of the System, the Boards have recommended that existing rates and charges for sewer service and the minimum volume water charge to the customers of the Boards be increased; now therefore

BE IT ORDAINED BY THE CITY COUNCIL OF WHITE SULPHUR SPRINGS, WEST VIRGINIA:

SECTION 1: That ORDINANCE NO. 2001-101 of the Codified Ordinances of the City of White Sulphur Springs be amended and re-enacted to read as follows:

SCHEDULE OF SEWER SERVICE RATES

The following schedules of rates charges and fees are hereby fixed and determined as the rates, charges and fees to charge to customers of the System throughout the entire territory served.

- (a) Establishing and Fixing Rates, Charges and Delayed Penalty Charges. The following schedule of rates, charges and delayed penalty charges are hereby fixed and determined as the rates, charges and delayed penalty charges to be billed by customers of the System throughout the entire territory served.

SCHEDULE 1

Applicability

Service in the entire territory.

Availability of Service

Available for general domestic, commercial and industrial service.

Rates

Commencing March 1, 2008 upon approval by the West Virginia Public Service Commission:

Volume Charge

Each customer shall pay six dollars and seventy four cents (\$6.74) per 1,000 gallons used. This is an increase of seventy-seven cents (\$.77) per 1,000 gallons from the existing rate effective in May 2002.

Minimum Customer Charge

Each customer shall pay a minimum customer charge of thirteen dollars and forty-eight cents (\$13.48) per month, for 2000 gallons usage. This represents an increase from the minimum customer charge for 1,000 gallons usage established in May, 2002.

Delayed Payment Penalty Charge

The above schedule is set on all current usage billings not paid in full by the latest pay date, which shall be no sooner then the twentieth day of the month, ten percent (10%) shall be added to the net current amount unpaid. The delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

SCHEDULE 2Applicability

Service in the entire territory.

Availability of Service

Available for general domestic, commercial and industrial service.

Rates

Commencing March 1, 2009, or immediately after completion of construction of the collection system, whichever event last occurs:

Volume Charge

Each customer shall pay eight dollars and four cents (\$8.04) per 1,000 gallons used. This is an increase of one dollar and thirty cents (\$1.30) per 1,000 gallons from the existing rate effective March 1, 2008.

Minimum Customer Charge

Each customer shall pay a minimum customer charge of sixteen dollars and eight cents (\$16.08) per month for 2,000 gallons usage.

Delayed Payment Penalty Charge

The above schedule is set on all current usage billing not paid in full by the latest pay date, which shall be no sooner than the twentieth day of the month, ten percent (10%) shall be added to the net current amount unpaid. The delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

Section II.

That Ordinance No. 925.02 (a) of the Codified Ordinances of the City of White Sulphur Springs be amended and re-enacted to read as follows:

SCHEDULE OF WATER SERVICE RATES:

Applicability

Service in the entire territory.

Availability of Service

Available for general domestic, commercial and industrial service.

Rates

Commencing March 1, 2008 upon approval by the West Virginia Public Service Commission:

Minimum Customer Charge

Each customer shall pay a minimum customer charge of seventeen dollars and twenty-six cents (\$17.26) per month for 2,000 gallons usage at a rate of eight dollars and sixty three cents (\$8.63) per 1000 gallons. This represents an increase from the existing minimum customer charge for 1,000 gallons usage which was effective June 1, 1996.

Volume Charge

Each customer shall pay five dollars and thirty nine cents (\$5.39) per 1,000 gallons for usage for the next 4,000 gallons used per month above the minimum customer charge for 2,000 gallons usage.

Each customer shall pay five dollars and twenty three cents (\$5.23) per 1,000 gallons usage for the next 4,000 gallons used per month.

Each customer shall pay four dollars and ninety-five cents (\$4.95) per 1,000 gallons for any usage above 10,000 gallons per month.

Delayed Payment Penalty Charge

The above schedule is set on all current usage billings not paid in full by the latest pay date, which shall be no sooner than the twentieth day of the month, ten percent (10%) shall be added to the net current amount unpaid. The delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

Section III.

That, in accordance with the requirements of Chapter 8, Article 11, Section 4 of the Code of West Virginia, 1931, as amended, the City of White Sulphur Springs shall cause notice of the proposed adoption of this Ordinance to be published as a Class I-O legal advertisement, with such publication being made at least five days before the City Council Meeting at which this Ordinance is to be finally adopted and with said notice meeting the other requirements set forth in Code 8-11-4.

Section IV.

That in accordance with the provisions of Chapter 24, Article 2, Section 4 (b) of the Code of West Virginia, as amended, the rules and regulations are the rates and charges provided for herein shall be effective not sooner than 45 days from the date of adoption.

Section V.

That in accordance with the Public Service Commission's Rules for the Construction and Filing Tariffs, 150CSR 2. Notice of this Ordinance shall be provided by:

- (a) causing to be published the Commission's Tariff Form No. 12 as a Class II legal advertisement with the first publication occurring within five days after the adoption of the Ordinance, in a qualified newspaper of general circulation in the area of White Sulphur Springs, and
- (b) causing to be published a press release that contains the substance that of Tariff Form No. 12, in general circulation in the area of White Sulphur Springs
- (c) posting a notice that conforms with Tariff Form No. 12 in a conspicuous place at the Board's business premises beginning the day after the City Council meeting at which this Ordinance is adopted and continuing for 30 days, and
- (d) filing with the Public Service Commission within 5 days after the adoption of this Ordinance, a copy of this Ordinance along with other information as required by Section 22.1.f of the Tarriff Rules.

Section VI.

0001509

All prior ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

I, James Perrow, the duly elected Recorder of The City of White Sulphur Springs, West Virginia, do hereby certify that the foregoing ordinance was duly passed and adopted by the governing body of the City of White Sulphur Springs, West Virginia, and that the proposed ordinance was read at least by title at two (2) meetings of the governing body with at least one (1) week intervening between each meeting, the publication requirements have been met, and that the ordinance is now in full force and effect.

FIRST READING: December 10, 2007

4 YEAS 0 NAYS
3 ABSENT

SECOND READING: January 14, 2008

7 YEAS 0 NAYS
0 ABSENT

EFFECTIVE DATE: January 14, 2008

Debra J. Fogus
Mayor Debra J. Fogus

1-14-2008
Date

James W. Perrow
Recorder James Perrow

1/14/2008
Date

PUBLIC NOTICE OF CHANGE IN RATES BY MUNICIPALITIES

NOTICE is hereby given that The City of White Sulphur Springs, W.Va. a public utility, has adopted by ordinance on January 14, 2008 a tariff containing increased rates, tolls and charges for furnishing Sewer/Water service to customers at White Sulphur Springs, W.Va. and surrounding territory .

The purposed increased rates and charges will become effective on March 1, 2008 and March 1, 2009 unless otherwise ordered by the Public Service Commission and will produce approximately \$ 322,218.00 in additional revenue for the calendar year 2008, an increase of 12.75%. The monthly bill for the customers will be changed as follows:

SEWER RATES:

Effective March 1, 2008

	<u>(#) Increase</u>	<u>Increase (%)</u>
Residential	\$.77	12.75%
Commercial	\$.77	12.75%
Industrial	\$.77	12.75%
Resale	\$.77	12.75%
Other	\$.77	12.75%

Effective March 1, 2009

	<u>(#) Increase</u>	<u>Increase (%)</u>
Residential	\$1.30	19.03%
Commercial	\$1.30	19.03%
Industrial	\$1.30	19.03%
Resale	\$1.30	19.03%
Other	\$1.30	19.03%

WATER RATES:**Effective March 1, 2008**

Each customer shall pay a minimum customer charge of seventeen dollars and twenty-six cents (\$17.26) per month for 2,000 gallons usage at a rate of eight dollars and sixty three cents (\$8.63) per 1,000 gallons. This represents an increase from the existing minimum customer charge for 1,000 gallons usage which was effective June 1, 1996.

Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing. The Commission shall review and approve or modify the increased rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges, by:

- (1) Any customer aggrieved by the changed rates or charges who presents to the Commission a petition signed by not less than twenty-five percent of the customers served by such municipally operated public utility; or
- (2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or;
- (3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be evidence of discrimination.

All petitions should be addressed by the Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

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

City of White Sulphur Springs City Hall
34 West Main Street
White Sulphur Springs

0001502

West Virginia 24986

A copy of the proposed rates is available for public inspection at the office of the Executive Secretary of the Public Service Commission at 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

*Public Service Commission
Of West Virginia*

201 Brooks Street, P. O. Box 812
Charleston, West Virginia 25323



Phone: (304) 340-0300
FAX: (304) 340-0325

February 20, 2008

Ms. Linda J. Coleman-Barker
Financial & Water/Sewer Secretary
City of White Sulphur Springs
34 West Main Street
White Sulphur Springs, WV 24986

Re: RFA 08-09/W
City of White Sulphur Springs's
Sewer Rate Ordinance

Dear Ms. Coleman-Barker:

The City of White Sulphur Springs's (City) sewer rate ordinance adopted on January 14, 2008, and filed with the Public Service Commission (Commission) on January 16, 2008, has been referred by the Commission's Executive Secretary to the Commission's Legal Division for review. This letter will also confirm the Commission's receipt of the additional sewer rate ordinance information filed by the City on February 15, 2008.

Based upon my review of the City's sewer rate ordinance information, the City has met the appropriate West Virginia Code requirements and has met all of the other requirements under Rules 22.1 - 22.5 of the Commission's Rules for the Construction and Filing of Tariffs (C.S.R. §150-2-22).

In conclusion, the City's adopted sewer rate ordinance was held by the Commission's Executive Secretary until the expiration of the statutory thirty (30) day protest period. This protest period started from the City's adoption date of January 14, 2008, and ended on February 13, 2008.

Based upon my review of the Commission's files, there have been no protests filed against the City's sewer rate ordinance. Therefore, the City's adopted sewer rate ordinance will be forwarded to the Commission's Tariff Officer, Ms. Vickie Young, for processing. The

RFA 08-09/W
February 20, 2008
Page 2

Step One sewer rates will become effective on and after March 1, 2008, as stated in the City's ordinance. The Step Two sewer rates will become effective on and March 1, 2009, or immediately after completion of construction of the collection system, whichever event last occurs as stated in the City's ordinance. If you should have any questions, please do not hesitate to contact me at your convenience.

Sincerely,



RONALD E. ROBERTSON, JR.

Staff Attorney

(304)340-0336

State Bar I.D. No. 4658

RER/s

cc: Sandra Squire, Executive Secretary
Caryn Watson Short, Supervising Attorney
Amy Swann, Director, Water and Wastewater Division
Vickie Young, Tariff Officer

H:\RROBERTSON\whitesulphurspringss.ord.wpd

MOUNTAIN MESSENGER

P.O. Box 429, Lewisburg, WV 24901

(304) 647-5724

The Weekend Newspaper for the Greenbrier Valley

Certificate of Publication

**STATE OF WEST VIRGINIA,
COUNTY OF GREENBRIER, SS:**

I, Michael Shoull, one of
the Editors or Agents of the *Mountain Messenger*, a weekly newspaper of general
circulation published at Lewisburg, WV in the County of Greenbrier, State of West
Virginia, do certify that publication of the advertisement or advertisements (case # or
description Tanff Form No 12)

attached hereto was made in 2 issues of said newspaper, dated
January 14, 2008; January 26, 2008.

Given under my hand this 29 day of January, 2008.

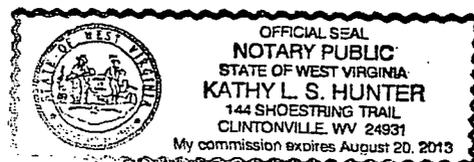
Michael Shoull
Editor or Publisher

200.74.
Publication Fee

Subscribed and Sworn to before me
this 29 day of January, 2008.

My commission expires: Aug 20 2013.

Signature *Kathy S. Hunter*
Notary Public



nal exams. While employment
 opportunities available for
 fil through October with The
 o take advantage of this perfect
 gain valuable experience.

mbrier

Notice

IT APPLICATION

D

TRANSPORTATION SERVICES

in Transit Authority is applying for a grant
 deral Transit Act, as amended. A general
 lows: The Mountain Transit Authority is
 U.S.C. Section 5311 and Local (including
 nce for the MTA during Fiscal Year 2009.
 ed-route service for the general public,
 ailored to meet the needs of the elderly
 e provided in the Region 4 counties of
 ter. The MTA provides the following ser-
 visabled individuals:

1) Friday in the Summersville area; 2) A
 ay in the Lewisburg/Fairlea area stopping
 ily services to and from a Sheltered
 of people in the Summersville-Richwood
 act basis to the clients of Seneca Mental
 ties; 5) Non-emergency Medical
 nty; 6) Lift-buses on every route; 7) MTA
 ssenger on or off the buses, or assist

on needs of the handicapped and elderly
 nterested party submit comments and/or
 the address below. Comments must be
 y 11, 2008.

detrimental impact on the environment,
 e purpose of this notice is to afford af-
 iders, and other interested agencies an
 ffer comments and/or recommendations
 t. The grant proposal will be available for
 uary 11, 2008, until February 11, 2008
 m., Monday through Friday, at the offices

ion 5311 capital funds become available,
 egory may include, but not be limited to:
 radios and communications equipment;
 astraints; computer hardware/software;
 ble goods. Persons interested in holding
 rocurement of capital equipment must
 11, 2008.

ision of comments, please contact: Man-
 ville, WV 26651. Additionally, copies of
 ing: Director/Division of Public Transit/
 East/Charleston, WV 25305. The MTA
 tual on the basis of race, color, creed,
 status with regard to public assistance,
 sion of public transportation services.
 avid L. Johnson, MTA Manager

Legal Notice

PUBLIC NOTICE OF CHANGE IN RATES BY MUNICIPALITIES

NOTICE is hereby given that The City of White Sulphur Springs, WV, a public utility, has adopted by ordinance on January 14, 2008, a tariff containing increased rates, tolls and charges for furnishing Sewer/Water service to customers at White Sulphur Springs, WV, and surrounding territory.

The proposed increased rates and charges will become effective on March 1, 2008, and March 1, 2009, unless otherwise ordered by the Public Service Commission and will produce approximately \$322,218.00 in additional revenue for the calendar year 2008, an increase of 12.75%. The monthly bill for the customers will be changed as follows:

SEWER RATES

Effective March 1, 2008

	(#) Increase	Increase (%)
Residential	\$.77	12.75%
Commercial	\$.77	12.75%
Industrial	\$.77	12.75%
Resale	\$.77	12.75%
Other	\$.77	12.75%

Effective March 1, 2009

	(#) Increase	Increase (%)
Residential	\$1.30	19.03%
Commercial	\$1.30	19.03%
Industrial	\$1.30	19.03%
Resale	\$1.30	19.03%
Other	\$1.30	19.03%

WATER RATES

Effective March 1, 2008

Each customer shall pay a minimum customer charge of seventeen dollars and twenty-six cents (\$17.26) per month for 2,000 gallons usage at a rate of eight dollars and sixty three cents (\$8.63) per 1,000 gallons. This represents an increase from the existing minimum customer charge for 1,000 gallons usage which was effective June 1, 1996.

Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing. The Commission shall review and approve or modify the increased rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges, by:

- (1) Any customer aggrieved by the changed rates or charges who presents to the Commission a petition signed by not less than twenty-five percent of the customers served by such municipally operated public utility; or
- (2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or
- (3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be evidence of discrimination.

All petitions should be addressed by the Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

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

City of White Sulphur Springs City Hall
 34 West Main Street
 White Sulphur Springs
 West Virginia 24986

A copy of the proposed rates is available for public inspection at the office of the Executive Secretary of the Public Service Commission at 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

The West Virginia Daily News
P.O. Box 471
Lewisburg, WV 24901
PHONE: (304) 645-1206

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA
COUNTY OF
GREENBRIER, TO WIT:

I, Louise Bassett,
one of the editors of The West
Virginia Daily News, a daily newspaper
of general circulation published
at Lewisburg, West Virginia,
in the County of Greenbrier, State
of West Virginia, do certify that
publication of the advertisement
or advertisements attached hereto
was made in two (2)
issues of said newspaper, dated

17 Jan 2008

24 Jan 2008

Given under my hand this the

24th

day of Jan, 2008.

Louise Bassett

Editor or Publisher

Subscribed and sworn to before me this 27th day of January,
2008.

My commission expires Sept 11, 2010

Ludy Steele Notary Public.

Publication Fee: \$ 178.23

Tariff Form No. 12

(Tariff Rule 44)

PUBLIC NOTICE OF CHANGE IN RATES BY MUNICIPALITIES

NOTICE is hereby given that The City of White Sulphur Springs, WV, a public utility, has adopted by ordinance on January 14, 2008, a tariff containing increased rates, tolls and charges for furnishing sewer/water service to customers at White Sulphur Springs, WV and surrounding territory.

The proposed increased rates and charges will become effective on March 1, 2008, and March 1, 2009, unless otherwise ordered by the Public Service Commission and will produce approximately \$322,218.00 in additional revenue for the calendar year 2008, an increase of 12.75%. The monthly bill for the customers will be changed as follows:

SEWER RATES:

EFFECTIVE March 1, 2008

	(#) Increase	Increase (%)
Residential	\$.77	12.75%
Commercial	\$.77	12.75%
Industrial	\$.77	12.75%
Resale	\$.77	12.75%
Other	\$.77	12.75%

Effective March 1, 2009

	(#) Increase	Increase (%)
Residential	\$1.30	19.03%
Commercial	\$1.30	19.03%
Industrial	\$1.30	19.03%
Resale	\$1.30	19.03%
Other	\$1.30	19.03%

WATER RATES:

Effective March 1, 2008

Each customer shall pay a minimum customer charge of seventeen dollars and twenty-six cents (\$17.26) per month for 2,000 gallons usage at a rate of eight dollars and sixty three cents (\$8.63) per 1,000 gallons. This represents an increase from the existing minimum customer charge for 1,000 gallons usage which was effective June 1, 1996.

Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing. The commission shall review and approve or modify the increased rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges, by:

(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by not less than twenty-five percent of the customers served by such municipally operated public utility; or

(2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or;

(3) Any customer or group of customers who are affected by said changes in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be evidence of discrimination.

All petitions should be addressed by the Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

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

City of White Sulphur Springs City Hall

34 West Main Street

White Sulphur Springs, West Virginia 24986

A copy of the proposed rates is available for public inspection at the office of the Executive Secretary of the Public Service Commission at 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

**AFFIDAVIT OF PUBLIC NOTICE
BY POSTING**

State of West Virginia
County of Greenbrier, to wit:

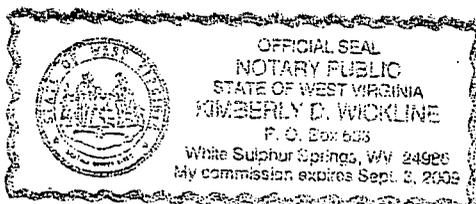
I, Linda J. Coleman-Barker, being first duly sworn upon my oath, do depose and say that I am the Financial Secretary for the City of White Sulphur Springs, and that I have been duly authorized by the City Council to execute this affidavit of public notice by posting.

The attached public notice, substantially in the format of Tariff Form No. 12 of the Public Service Commission of West Virginia's Rules for the Construction and Filing of Tariffs, 150 C.S.R. 2, and as required by 150 C.S.R. 2.22.1.c.4., was first posted in a conspicuous place on the premises where the City conducts its utility business with the public on January 15, 2008 and remained posted until February 14, 2008.

Signed: Linda J. Coleman-Barker

Taken, subscribed and sworn to before me in said county this 14th day of February, 2008.

My commission expires September 3, 2009.



Kimberly D. Wickline
Notary Public

CITY OF WHITE SULPHUR SPRINGS
34 WEST MAIN STREET
WHITE SULPHUR SPRINGS, WEST VIRGINIA 24986

January 15, 2008

Legal Advertising Department
Mountain Messenger
P.O. Box 429
Lewisburg, West Virginia 24901

Dear Madam/Sir:

Print the enclosed Tariff Form No. 12 as a Class II legal advertisement, with the first publication to be made within five days of January 14, 2008. I have enclosed two copies. Please send one copy to your newsroom as a press release. Since this is a matter of vital public interest to many of your readers, I encourage you to print a news article containing the information reflected in the Tariff Form. As soon as the second publication has been made, please provide me with an affidavit of publication and a tear sheet containing the newspaper article.

Thank you for your cooperation in this matter.

Yours very truly,


Mayor

**Tariff Form No. 12
(Tariff Rule 44)**

PUBLIC NOTICE OF CHANGE IN RATES BY MUNICIPALITIES

NOTICE is hereby given that The City of White Sulphur Springs, W.Va. a public utility, has adopted by ordinance on January 14, 2008 a tariff containing increased rates, tolls and charges for furnishing Sewer/Water service to customers at White Sulphur Springs, W.Va. and surrounding territory .

The purposed increased rates and charges will become effective on March 1, 2008 and March 1, 2009 unless otherwise ordered by the Public Service Commission and will produce approximately \$ 322,218.00 in additional revenue for the calendar year 2008, an increase of 12.75%. The monthly bill for the customers will be changed as follows:

SEWER RATES:

Effective March 1, 2008

	<u>(#) Increase</u>	<u>Increase (%)</u>
Residential	\$.77	12.75%
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Industrial	\$.77	12.75%
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Other	\$.77	12.75%

Effective March 1, 2009

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Effective March 1, 2008

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Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing. The Commission shall review and approve or modify the increased rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges, by:

- (1) Any customer aggrieved by the changed rates or charges who presents to the Commission a petition signed by not less than twenty-five percent of the customers served by such municipally operated public utility; or
- (2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or;
- (3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be evidence of discrimination.

All petitions should be addressed by the Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

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

City of White Sulphur Springs City Hall
34 West Main Street
White Sulphur Springs

West Virginia 24986

A copy of the proposed rates is available for public inspection at the office of the Executive Secretary of the Public Service Commission at 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

CITY OF WHITE SULPHUR SPRINGS
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 2009 A

PETITION OF SANITARY BOARD

Pursuant to the provisions of Chapter 16, Article 13, Section 5 of the Code of West Virginia, 1931, as amended, the Sanitary Board (the "Sanitary Board") of the City of White Sulphur Springs (the "City") hereby petitions the Council of the City to enact an ordinance

(a) authorizing the issuance of not more than \$4,000,000 in aggregate principal amount of sewerage system revenue bonds (the "Bonds") the proceeds of which, shall be used, along with other funds and moneys of, or available to, the Sanitary Board which may be lawfully expended for such purposes, to permanently finance the cost of the design, acquisition and construction of certain improvements to the City's sewerage collection system (the "Project");

(b) directing the prepayment of the Sewerage System Refunding Revenue Bonds, Series 2008 A (BB and T);

(c) authorizing the payment of the costs of issuance; and

(d) contain such other provisions as may be necessary in the premises.

The Sanitary Board respectfully represents to the Council that one of the two persons appointed to the Sanitary Board by the Council is a registered professional engineer.

WITNESS our signatures on this 3rd day of February, 2009.

THE SANITARY BOARD OF THE
CITY OF WHITE SULPHUR SPRINGS

By: Delia Fogus
Mayor of the City and
Ex-Officio Chairman

David Dent
Member

Ann H. McClain
Engineer-Member

**City of White Sulphur Springs
Council Meeting
Date: February 9, 2009**

I. Call to Order

II. Roll Call

III. Approval of Minutes

January 12, 2009

January 12, 2009 – Public Hearing

Financial Statements

IV. Standing Committee Reports

A. Sanitary & Water Boards-Mayor Debra Fogus

B. Planning & Zoning-Mike Honaker

C. Parks & Recreation-Chris Hanna

D. Recycle & Beautification-Linda Shortridge

a. Call in to City Hall for Yard Waste & Recycle Pickup

E. Emergency Services-Peggy Bland

F. Streets-Jim Perrow

G. Convention & Visitors Bureau-Lynn Swann

V. Officer Report

A. Police Chief-James Hylton

B. Fire Chief-Paul Fogus

C. Maintenance Supervisor-Randy Pickering

VI. Special Reports

A. Tri-Cities Power Authority

B. Main Street/Revitalization Committee-Sadie Fraley

C.

VII. Citizens Comments

A.

B.

VIII. Resolutions/Proclamations

- A.
- B.
- C.

IX. Ordinances/Policies

- A. **First Reading of an Ordinance authorizing the issuance of not more than \$4,000,000 in aggregate principal amount of Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and addressing issues related thereto.**
- B. **First Reading of an Ordinance authorizing the issuance of not more than \$650,000 in aggregate principal amount of Water Design Revenue Bonds, Series 2009 A (West Virginia DWTRF Program) and addressing issues related thereto.**
- C.

X. Unfinished Business

- A. **Sweeney/Leftwich Property on Gum Street**
- B.
- C.

XI. New Business

- A. **Approval Of 2009-2010 Budget**
- B.
- C.
- D.

XII. Miscellaneous Remarks

*****Monday, February 16, 2009 – President’s Day**

****City Hall Closed**

*****Monday, Feb. 16th and Tuesday, Feb. 17th Garbage Will Be Picked Up
On Tuesday, Feb. 17th**

XIII. Adjournment

**THE CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)**

2.8

BOND ORDINANCE

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ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF WHITE SULPHUR SPRINGS AND THE FINANCING OF THE COST INCLUDING PREPAYMENT OF CERTAIN OUTSTANDING DESIGN BONDS OF THE CITY, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$4,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 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 BY THE COUNCIL OF THE CITY OF WHITE SULPHUR SPRINGS:

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 Code of West Virginia, 1931, as amended (collectively, the “Act”), and other applicable provisions of law.

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

A. The City of White Sulphur Springs (the “Issuer”) is a municipal corporation and political subdivision of the State of West Virginia in Greenbrier County of said State.

B. The Issuer presently owns and operates a public sewerage system through its Sanitary Board. 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 line and other collection system improvements (collectively, the "Project"), which constitute properties for the collection, transportation, treatment, purification and disposal of liquid or solid wastes, sewage or industrial wastes (the existing public sewerage system of the Issuer, the Project and any further additions, betterments and improvements are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Recorder of the Issuer.

C. The Issuer intends to permanently finance the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund (the "SRF Program"), pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), in the aggregate principal amount of not more than \$4,000,000 (the "Series 2009 A Bonds"), to permanently finance the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the SRF Program; interest upon the Series 2009 A Bonds prior to and during construction or acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Series 2009 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 2009 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 2009 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, including the hereinafter defined Series 2008 A Bonds which paid for certain design costs, shall be deemed Costs of the Project, as hereinafter defined.

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

F. It is in the best interests of the Issuer that the Series 2009 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 respective parties (the "Loan Agreement"), approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2009 A Bonds as to liens, pledge, source of and security for payment, being the Issuer's Sewer Revenue Bonds, Series 1987 A (United States Department of Agriculture), dated March 3, 1988, issued in the original principal amount of \$3,500,000 (the "Series 1987 A Bonds") and Sewerage System Refunding Revenue Bonds, Series 2008 A, dated November 14, 2008, issued in the original principal amount of \$300,000 (the "Series 2008 A Bonds"). The Series 1987 A Bonds and Series 2008 A Bonds, outstanding on the date of issuance of the Series 2009 A Bonds, are referred to as the "Prior Bonds." The Issuer intends to prepay all or a part of the Series 2008 A Bonds with proceeds of the Series 2009 A Bonds.

The Series 2009 A Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2009 A Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the registered owners of the Prior Bonds to the issuance of the Series 2009 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all Operating Expenses of the System, the principal of and interest on the Series 2009 A Bonds and the Prior Bonds and all funds and accounts and other payments provided for herein and in the Prior Ordinances.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Project and the System, the issuance of the Series 2009 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof, by the Infrastructure Council and 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 2009 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 2009 A Bonds for the purposes set forth herein.

K. The Project has been reviewed and determined to be technically and financially feasible by the Infrastructure 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 A Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owners, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 2009 A Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. 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 A Bonds, or any other agency, board or department of the State 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.

“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 2009 A Bonds, the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

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

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

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

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

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

“Consulting Engineers” means Ghosh Engineers Inc., Charleston, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

“Costs” or “Costs of the Project” means those costs described in Section 1.02D hereof to be a part of the cost of 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.

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

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

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

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

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

“Independent Certified Public Accountant” 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.

“Infrastructure 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 Infrastructure Council.

“Issuer” means The City of White Sulphur Springs, a municipal corporation and political subdivision of the State of West Virginia, in Greenbrier 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, or to be entered, into by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2009 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 2009 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2009 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 2009 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.

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

“Outstanding” when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being authenticated and delivered, except (i) any Bond or Prior Bond canceled by the Bond

Registrar or Registrar for Prior Bonds, at or prior to said date; (ii) any Bond or Prior Bonds, 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; (iv) any Prior Bond deemed to have been paid; and (v) for purposes of consents or other action by a specified percentage of Registered Owners of 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 designated as such for the Series 2009 A Bonds in the Supplemental Resolution.

“Prior Bonds” means, collectively, the Issuer’s Sewer Revenue Bonds, Series 1987 A (United States Department of Agriculture), dated March 3, 1988, issued in the original principal amount of \$3,500,000 and the Issuer’s Sewer Revenue Bonds, Series 2008 A (Branch Banking and Trust), dated November 14, 2008, issued in the original principal amount of \$300,000.

“Prior Ordinances” means, collectively, the ordinances and supplemental resolutions of the Issuer, authorizing the issuance of the Prior Bonds.

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

“Project” means the Project as described in Section 1.02B hereof.

“PSC” means the Public Service Commission of West Virginia and any successor to the functions thereof.

“PSC Order” means, collectively, the final order or orders of the PSC, granting the Issuer a certificate of convenience and necessity to construct the Project and approving the financing for the Project and the rates of the System.

“Qualified Investments” means and includes any of the following:

- (a) Government Obligations;

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

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

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

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

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

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

(h) The West Virginia “consolidated fund” managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the Code of West Virginia, 1931, as amended; and

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

“Recorder” means the Recorder of the Issuer.

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

“Registrar” means the Bond Registrar.

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

“Renewal and Replacement Fund” means the Renewal and Replacement Fund created by the Prior Ordinances and continued hereby.

“Reserve Accounts” means, collectively, the respective Reserve Accounts created for the Series 2009 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 2009 A Bonds.

“Revenue Fund” means the Revenue Fund created by the Prior Ordinances and continued hereby.

“Sanitary Board” or “Board” means the Sanitary Board of the Issuer.

“Series 2009 A Bonds” means the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the Issuer, authorized by this Bond Legislation.

“Series 2009 A Bonds Construction Trust Fund” means the Series 2009 A Bonds Construction Trust Fund created by Section 5.01 hereof.

“Series 2009 A Bonds Reserve Account” means the Series 2009 A Bonds Reserve Account created by Section 5.02 hereof.

“Series 2009 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 2009 A Bonds in the then current or any succeeding year.

“Series 2009 A Bonds Sinking Fund” means the Series 2009 A Bonds Sinking Fund created by Section 5.02 hereof.

“Sinking Funds” means, collectively, the respective Sinking Funds created for the Series 2009 A Bonds and the Prior Bonds.

“SRF Administrative Fee” means any administrative fee required to be paid under the Loan Agreement for the Series 2009 A Bonds.

“SRF Program” means the West Virginia 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 2009 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2009 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 Series 2009 A Bonds, 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, collectively, the complete existing municipal sewerage 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 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.

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 not to exceed \$4,000,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2009 A Bonds shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the DEP and the Authority.

The cost of the Project is estimated not to exceed \$4,000,000, which will be obtained from proceeds of the Series 2009 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 2009 A Bonds, funding a reserve account for the Series 2009 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2009 A Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2009 A Bonds of the Issuer. The Series 2009 A Bonds shall be issued as a single bond, designated as "Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program)," in the principal amount of not more than \$4,000,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2009 A Bonds remaining after funding of the Series 2009 A Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Series 2009 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 2009 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 2009 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2009 A Bonds, if any, 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 2009 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 2009 A Bonds. The Series 2009 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 such Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the

dates of payment of principal installments of such 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 set forth in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2009 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2009 A Bonds shall cease to be such officer of the Issuer before the Series 2009 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 2009 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 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 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 2009 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 2009 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner, in accepting the Series 2009 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner shall further be conclusively deemed to have agreed that such Bonds shall be incontestable in the hands of a bona fide holder for value.

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

The registered Series 2009 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 2009 A Bonds or transferring the registered Series 2009 A Bonds are exercised, all Series 2009 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2009 A Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Series 2009 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 2009 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2009 A Bonds or, in the case of any proposed redemption of Series 2009 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 2009 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Registered Owner's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be canceled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2009 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 System as herein provided. No Registered Owner of the Series 2009 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 A Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of debt service of the Series 2009 A Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on the Series 2009 A Bonds and the Prior 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 A Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 2009 A Bonds to the original purchasers upon receipt of a request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2009 A Bonds to the original purchasers.

Section 3.10. Form of Bonds. The text of the Series 2009 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 WHITE SULPHUR SPRINGS
SEWER REVENUE BOND, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-_____

\$_____

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF WHITE SULPHUR SPRINGS, a municipal corporation and political subdivision of the State of West Virginia in Greenbrier 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, _____, 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 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, _____, as set forth on said EXHIBIT B.

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 (as defined in the hereinafter described Bond Legislation) hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Bond Legislation) on the 15th day of the month next preceding a payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and among the Issuer, the Authority and the DEP, dated _____, 200_.

This Bond is issued (i) to pay the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) to prepay the Series 2008 A Bonds; (iii) to fund a reserve account for this Bond; and (iv) to pay certain costs of issuance of this Bond 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 Code of West Virginia, 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 200_, and a Supplemental Resolution duly adopted by the Issuer on _____, 200_ (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (1) SEWER REVENUE BONDS, SERIES 1987 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 3, 1988, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$3,500,000; [AND THE SEWER REVENUE BONDS, SERIES 2008 A (BRANCH BANKING AND TRSUT), DATED NOVEMBER 14, 2008, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$300,000] (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the System, on a parity with the pledge of Net Revenues in favor of the holders of the Prior Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2009 A Bonds Reserve Account"), and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall

the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2009 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount of principal of and interest on this Bond payable in any year and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds; provided however, that so long as there exists in the Series 2009 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered 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 (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 the costs of issuance hereof as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the Registered Owner of this Bond.

In accordance with the requirements of the United States Department of Agriculture for the issuance of parity obligations, this Bond will be in default should any

proceeds of this Bond be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

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 WHITE SULPHUR SPRINGS
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
_____, 200_.

[SEAL]

Mayor

ATTEST:

Recorder

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

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

Date: _____, 200_.

_____, as Registrar

Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$		(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	
TOTAL		\$	<u> </u>

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

Dated: _____, _____.

In the presence of:

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Loan Agreement, including all schedules and exhibits attached thereto, are hereby approved and ratified and incorporated into this Bond Legislation. The Series 2009 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. -

Section 3.12. Filing of Amended Schedule. Upon completion of the acquisition and construction of the Project, the Issuer will file with the Authority and the 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 created by the Prior Ordinances) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

- (1) Revenue Fund (created by the Prior Ordinances);
- (2) Depreciation Fund (created by the Prior Ordinances);
- (3) Renewal and Replacement Fund; and
- (4) Series 2009 A Bonds Construction Trust Fund.

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

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

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

- (1) The Issuer shall first, each month, pay from the Revenue Fund the current Operating Expenses of the System.
- (2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit (i) the amount necessary to pay the interest

on the Prior Bonds as prescribed in the Prior Ordinances; and (ii) to the Commission, commencing 3 months prior to the first date of payment of interest on the Series 2009 A Bonds, for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2009 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2009 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 2009 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit (i) the amount necessary to pay the principal on the Prior Bonds as prescribed in the Prior Ordinances; and (ii) to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2009 A Bonds, for deposit in the Series 2009 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2009 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 2009 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

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

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinances and not in addition thereto), exclusive of any payments into the Reserve Accounts. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall

be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, 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.

(6) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund to the Depreciation Fund the amounts required by the Prior Ordinances.

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

All investment earnings on moneys in the Series 2009 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account shall be returned, after fully funded, 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 2009 A Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due, if any, on the Series 2009 A Bonds and then to the next ensuing principal payment due thereon.

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

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

The Issuer shall not be required to make any further payments into the Series 2009 A Bonds Sinking Fund or the Series 2009 A Bonds Reserve Account when

the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2009 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Interest, principal or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 2009 A Bonds and the Prior 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 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account created hereunder, and all amounts required for such accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority, the Issuer shall make the necessary arrangements whereby required payments into such accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates hereunder.

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

The Series 2009 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2009 A Bonds Outstanding 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, principal and reserve account payments, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

C. The Issuer shall also on the first day of each month (if the first day is not a business day, then the first business day of each month), commencing with the payment set forth in Section 5.03.A.(2) hereof, remit to the Commission the SRF Administrative Fee set forth in the Schedule Y attached to the Loan Agreement.

D. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement, and submit a copy of said form along with a copy of its payment check to the Authority by the fifth day of each calendar month.

E. 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 shall be required by law, such excess shall be considered as Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

F. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar or the Depository Bank, on such dates as the respective parties shall require, such additional sums as shall be necessary to pay their respective charges then due. If required by the Authority, the Issuer shall make the necessary arrangements whereby payments to the Commission under this paragraph shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

G. The moneys 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.

H. 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.

I. 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.

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

ARTICLE VI

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

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

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

C. Next, from the proceeds of the Series 2009 A Bonds, there shall be paid to the holder of the Series 2008 A Bonds, the principal balance outstanding and the interest accrued to the date of payment .

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

E. 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 A Bonds shall be expended as approved by the DEP.

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

Except as provided in Section 6.01 hereof, disbursements from the Series 2009 A Bonds Construction Trust Fund shall be made only after submission to and approval from 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, moneys in the Series 2009 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 Registered Owner of the Series 2009 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Registered Owner of the Series 2009 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 2009 A Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2009 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 Registered Owner of the Series 2009 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 A Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of debt service of the Series 2009 A Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on the Series 2009 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, 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 Issuer has a rate ordinance under consideration and this rate ordinance must be adopted and unappealable prior to the issuance of the Series 2009 A Bonds.

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

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinances. Additionally, so long as the Series 2009 A Bonds are outstanding and except as otherwise required by law or with the written consent of the DEP and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to 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 A Bonds, immediately be remitted to the Commission for deposit in the Series 2009 A Bonds Sinking Fund, and, with the written permission of the DEP and the Authority, or in the event the Authority is no longer a Registered Owner, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest on the Series 2009 A Bonds. Any balance remaining after the payment of the Series 2009 A Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other

disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine, upon consultation with a professional engineer, that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. The payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amount required to be paid into such account by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding, without the prior approval and consent in writing of the Registered Owners, or their duly authorized representatives, of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Registered Owners of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2009 A Bonds. All obligations issued by the Issuer after the issuance of the Series 2009 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 2009 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 2009 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2009 A Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the 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. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2009 A Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the DEP and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinances).

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

No such Parity Bonds shall be issued, except for the purposes of financing the costs of the design, acquisition or construction of additions, extensions, improvements or betterments to the System or refunding any Bonds outstanding, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided, 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 additional Parity Bonds, shall not be less than 115% of the largest aggregate amount which will mature or become due in any succeeding year for principal of and interest on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this 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 prior to the date of issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Recorder prior to the issuance of such additional Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

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

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2009 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2009 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 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 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 of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Registered Owner of the Series 2009 A Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

The Issuer shall file with the Authority and the DEP, or any other original purchaser of the Series 2009 A Bonds, and shall mail in each year to any Registered Owner of the Series 2009 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 Accountant (and to the extent legally required, in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit Act, or any successor thereof) and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountant, or a summary thereof, to any Registered Owner of the Series 2009 A Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 2009 A Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

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

The Issuer shall permit the Authority 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 also provide the Authority and the DEP, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the DEP with respect to the System pursuant to the Act.

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.

Section 7.09. Rates. Prior to the issuance of the Series 2009 A Bonds, equitable rates or charges for the use of and service rendered by the System shall be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Series 2009 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 A Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the Reserve Requirements are on deposit respectively in the Series 2009 A Bonds Reserve Account and the Reserve Accounts for obligations on a parity with the Series 2009 A Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Series 2009 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 A Bonds, including the Prior 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.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the 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 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 within 30 days of adoption thereof mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and the DEP and to any Registered Owner of any 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 Authority, the DEP and any Registered Owner of such Bonds or anyone acting for and on behalf of such Registered Owner.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for 2 years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement, and forward a copy of such report to the Authority and the 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 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, 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 PSC and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are

fully paid. To the extent authorized by the laws of the State and the rules and regulations of the PSC, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the PSC, discontinue and shut off the services of the System, 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 waterworks facilities are not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a termination agreement with the provider of such water, subject to any required approval of such agreement by the PSC and all rules, regulations and orders of the PSC.

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 either 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 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 Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and

subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

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

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code Section 38-2-39.

(4) FIDELITY BONDS will be provided as to every officer and employee of the Board or 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.

(5) 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.

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

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 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. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear. The Issuer shall verify such insurance prior to commencement of construction.

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

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

Section 7.17. Completion of Project; Permits and Orders. The Issuer shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project, all orders and approvals from the PSC and the Infrastructure Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Bonds required by State law, with all requisite appeal periods having expired without successful appeal.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer shall provide the DEP and the Council with copies of all documents submitted to the Authority.

The Issuer shall also comply with all applicable laws, rules and regulations issued by the Authority and the 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. Contracts; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2009 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 2009 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 2009 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

INVESTMENTS; NON ARBITRAGE

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 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 if 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 2009 A Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Series 2009 A Bonds from gross income for federal income tax purposes.

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 A Bonds:

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

(2) If default occurs in the Issuer’s observance of any of the covenants, agreements or conditions on their respective parts relating to the Series 2009 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2009 A Bonds, and such default shall have continued for a period of 30 days after the Issuer or Board, as appropriate, 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 the Registered Owner of a Bond; or

(3) If the Issuer or Board 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 Ordinance.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Series 2009 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 Series 2009 A Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Series 2009 A Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Series 2009 A Bonds, or the rights of such Registered Owners; provided however, that all rights and remedies of the Registered Owners of the Series 2009 A Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Series 2009 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 the System and shall hold, operate and maintain, manage and control the System, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to the System as the Issuer itself might do.

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 the System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Registered Owners of the Series 2009 A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2009 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2009 A Bonds from gross income for federal income tax purposes.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to the issuance of the Series 2009 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2009 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 2009 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2009 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owners thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2009 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Registered Owner as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Series 2009 A Bonds from gross income of the Registered Owners thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the 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 2009 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 enactment of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Recorder and members of the Governing Body and the Sanitary Board were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance in the form set forth in Exhibit A attached hereto and incorporated herein by reference, shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the West Virginia Daily News, 1 qualified newspaper of general circulation in The City of White Sulphur Springs, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2009 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than 10 days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. The Governing Body hereby determines that the abstract of this Ordinance as set forth in Exhibit A contains sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Section 11.08. Effective Date. This Ordinance shall take effect immediately following public hearing and final reading hereof.

First Reading	February 9, 2009
Second Reading	February 23, 2009
Public Hearing and Supplemental Resolution	March 9, 2009

CERTIFICATION

Certified a true copy of an Ordinance duly passed by the Council of THE CITY OF WHITE SULPHUR SPRINGS on February 23, 2009, and effective March 9, 2009.

Dated this 9th day of April, 2009.

[SEAL]

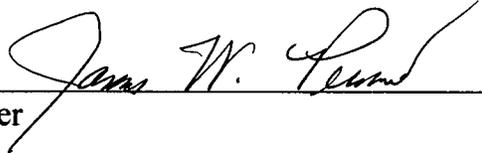

Recorder

EXHIBIT A

CITY OF WHITE SULPHUR SPRINGS

NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on February 23, 2009, the Council of the City of White Sulphur Springs (the "Issuer") adopted an ordinance which, among other things:

1. Authorized the acquisition and construction of certain additions, betterments and improvements (the "Project") to the Issuer's existing public sewerage system (the "System") and the financing of the cost including, financing incurred for design costs, not otherwise provided, thereof through the issuance of not more than \$4,000,000 in aggregate principal amount of Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) (the "Bonds").

2. Directed that the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, payable quarterly on such dates, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution or in the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority and the West Virginia Department of Environmental Protection (the "Loan Agreement").

3. Authorized the execution and delivery of the Loan Agreement.

4. Directed the continuation of a Revenue Fund and the disposition of the revenues of the System; provided for the payment of operating expenses; provided for the monthly payment of principal of and interest on the Bonds when due; provided for the creation of a Sinking Fund, a Reserve Account and a Renewal and Replacement Fund for the Bonds; and provided for the use of excess funds of the System.

5. Directed the creation of a Bond Construction Trust Fund and the disbursement of Bond proceeds.

6. Provided that the Bonds shall not 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 of the System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the Registered Owners of the Bonds to the Net Revenues of the System.

7. Provided certain conditions for the issuance of additional bonds.
8. Provided for insurance coverage on the Project, enforcement of collection of rates and other charges for the System, and other covenants of the Issuer in favor of the Registered Owners of the Bonds.
9. Established the events of default and the remedies of the Registered Owners of the Bonds.
10. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The Issuer contemplates the issuance of the Bonds described in and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of the City of White Sulphur Springs at a regular meeting on March 9, 2009, at 7:00 p.m., in the Council Chambers, City Hall, White Sulphur Springs, West Virginia, at 34 West Main Street., White Sulphur Springs, West Virginia, and present protests and be heard as to whether the above-described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council is on file with the Recorder for review by interested persons during the office hours of the City Hall.

/s/ _____
Recorder

CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

2.9

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE CITY OF WHITE SULPHUR SPRINGS SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM); AUTHORIZING AND APPROVING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Council (the "Governing Body") of the City of White Sulphur Springs (the "Issuer") has duly and officially passed a Bond Ordinance on February 23, 2009, effective March 9, 2009 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF WHITE SULPHUR SPRINGS AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$4,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 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, the capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the Issuer, in an aggregate principal amount not to exceed \$4,000,000 (the "Bonds"), and has authorized the execution and delivery of a loan agreement relating to the Bonds, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "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 Bond Ordinance it is provided that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds should be established by a supplemental resolution, and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

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

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be approved and ratified by the Issuer, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WHITE SULPHUR SPRINGS, AS FOLLOWS:

Section 1. It is hereby found and determined that:

(A) The Notice of Public Hearing and Abstract of Bond Ordinance (the "Notice") was duly published in The West Virginia Daily News, a qualified newspaper of general circulation in the Issuer, with the first publication thereof being not

less than 10 days before the day set by the Bond Ordinance and the Notice for the public hearing at which interested persons may appear before the Council and present protests and suggestions and with the last publication thereof being prior to said date set by the Bond Ordinance and the Notice for the public hearing, and a copy of the Affidavit of Publication reflecting such publications is incorporated herein by reference;

(B) In accordance with the Bond Ordinance and the Notice, the Recorder has maintained in his or her office a certified copy of the Bond Ordinance for review by interested persons during the regular office hours of such office;

(C) In Council chambers, City Hall, White Sulphur Springs, West Virginia, on March 9, 2009, at 7:00 p.m., prevailing time, in accordance with the Bond Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Bond Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) At the public hearing, no significant reasons were presented that would require modification or amendment of the Bond Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the Issuer; and

(E) The Bond Ordinance shall be put into effect as of the date hereof and the Bonds contemplated thereby shall be issued, all as provided in the Bond Ordinance and this Supplemental Resolution.

Section 2. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the Issuer, originally represented by a single Bond, numbered AR-1, in the original principal amount of \$3,874,614. The Bonds shall be dated the date of delivery, shall finally mature June 1, 2040, shall be non interest bearing. The principal of and interest on the Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2010, in the amounts as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Issuer hereby approves and shall pay the SRF Administrative Fee equal to ½% of the principal amount of the Bonds set forth in the Schedule Y attached to the Loan Agreement. The Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the Registered Owner of the Bonds.

Section 3. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 4. The Issuer hereby ratifies, approves and accepts the Loan Agreement, including all schedules and exhibits attached thereto, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the application to the 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 5. The Issuer hereby appoints and designates United Bank, Inc., Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond Ordinance and approves and accepts the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed and approved.

Section 6. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Commission"), to serve as Paying Agent for the Bonds under the Bond Ordinance.

Section 7. The Issuer hereby appoints and designates *First Nat Bank* White Sulphur Springs, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 8. Series 2009 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2009 A Bonds Sinking Fund as capitalized interest.

Section 9. Series 2009 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2009 A Bonds Reserve Account.

Section 10. Approximately \$300,000 will be applied to the payment in full of the Issuer's Sewerage System Refunding Revenue Bonds, Series 2008 A (BB and T). The remaining proceeds of the Bonds, as advanced from time to time, shall be deposited in or credited to the Series 2009 A Bonds Construction Trust Fund, as received from time to time for payment of costs of the Project, including costs of issuance of the Bonds.

Section 11. The Mayor and Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or

desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered to the Authority pursuant to the Loan Agreement on or about April 9, 2009.

Section 12. The acquisition and construction of the Project and the financing thereof with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

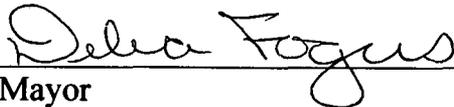
Section 13. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to invest all moneys in such money market accounts until further directed in writing by the Issuer. Moneys in the Series 2009 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 14. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project.

Section 15. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 16. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 23rd day of March, 2009.



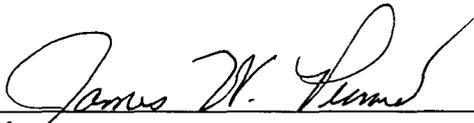
Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of The City of White Sulphur Springs on the 23rd day of March, 2009.

Dated this 9th day of April, 2009.

[SEAL]


Recorder

**“SPECIAL”
COUNCIL MEETING**

MONDAY, MARCH 23, 2009

**AT
5:15P.M.**

RE:

**1. Approval Of Supplemental Resolution –
Providing As To The Principal Amount, Date, Maturity Date,
Interest Rate, Payment Schedule, Sale Price And Other Terms Of
The City Of White Sulphur Springs Sewer Revenue Bonds, Series
2009 A (West Virginia SRF Program); Authorizing And Approving
The Loan Agreement Relating To Such Bonds And The Sale And
Delivery Of Such Bonds To The West Virginia Water
Development Authority; Designation A Registrar, Paying Agent
And Depository Bank; And Making Other Provisions As To The
Bonds.**

**2. 2nd Reading Of Ordinance -
Proposed Water Rate Increase**

City of White Suphur Springs

Council Meeting

Date: Monday, February 9th, 2009

I.	Call to Order	The meeting was called to order by Mayor Debbie Fogus as 7:05 p.m.
II.	Roll Call	Those members in attendance were the following: Mayor Debbie Fogus, Recorder James Perrow and Councilpersons-Linda Shortridge, Mike Honaker, Chris Hanna, Peggy Bland and Lynn Swann. All present.
III.	Approval of Minutes January 12, 2009 January 12, 2009 Public Hearing	Councilperson Bland made a motion to approve the minutes of January 12, 2009 and the minutes of the public hearing for January 12, 2009. Councilperson Swann seconded the motion. All in favor. Motion carried.
*	Financial Statements	<p>General Fund - \$795,238.32 Expenditures - \$788,141.11 Balance - \$7,097.21</p> <p>Water Fund - \$410,885.90 Expenditures - \$423,304.37 Balance - \$12,418.47 (negative)</p> <p>Sewer Fund - \$482,792.32 Expenditures - \$471,602.75 Balance - \$11,189.57</p> <p>Financial Statements Approved: Councilperson Honaker made a motion to accept the financial statements as</p>

		<p>presented and to pay the bills. Councilperson Shortridge seconded the motion. All in favor. Motion carried.</p>							
<p>IV.</p>	<p><u>Standing Committee Reports</u></p> <table border="1"> <tr> <td data-bbox="322 532 718 649"> <p>A. Sanitary & Water Board By:</p> </td> </tr> <tr> <td data-bbox="322 649 718 712"> <p>B. Planning & Zoning By:</p> </td> </tr> <tr> <td data-bbox="322 712 718 819"> <p>C. Parks & Recreation By:</p> </td> </tr> <tr> <td data-bbox="322 819 718 936"> <p>D. Recycle & Beautification By:</p> </td> </tr> <tr> <td data-bbox="322 936 718 1053"> <p>E. Emergency Services By:</p> </td> </tr> <tr> <td data-bbox="322 1053 718 1117"> <p>F. Streets By:</p> </td> </tr> <tr> <td data-bbox="322 1117 718 1170"> <p>G. Convention & Visitors</p> </td> </tr> </table>	<p>A. Sanitary & Water Board By:</p>	<p>B. Planning & Zoning By:</p>	<p>C. Parks & Recreation By:</p>	<p>D. Recycle & Beautification By:</p>	<p>E. Emergency Services By:</p>	<p>F. Streets By:</p>	<p>G. Convention & Visitors</p>	<p>(A) Mayor Fogus announced that the bids were received on the sewer collection system project and that the bid was awarded to Mike Enyart and Sons of South Point, Ohio in the amount of \$2,512,552.00. She said that seven bids total was submitted. Mayor Fogus reported that a special Water Board meeting is scheduled for Tuesday, February 17th, 2009 at 4:00 p.m.. This meeting is scheduled to discuss the financing of the water systems project and the rising cost of caustic soda which is used to treat our water due to hardness. She said that last year at this time that the caustic soda was costing around \$6,000.00 per month and is now costing \$17,000.00 per month. Councilperson Hanna questioned if the City has to accept the low bid as a local contractor had submitted a bid on the sewer system collection project but was not the lowest. He said that he feels that if there is any way possible that he would like to see the money stay local and would like to award the bid to the local contractor which is Lynch Construction. He also stated that</p>
<p>A. Sanitary & Water Board By:</p>									
<p>B. Planning & Zoning By:</p>									
<p>C. Parks & Recreation By:</p>									
<p>D. Recycle & Beautification By:</p>									
<p>E. Emergency Services By:</p>									
<p>F. Streets By:</p>									
<p>G. Convention & Visitors</p>									

he felt we would get a better job in the end. Paul Ghosh explained that he felt rebidding the project would be a mistake as the majority of the time bids will come in higher. He felt this may also jeopardize the loan that we are trying to obtain.

Sammie Gee explained that she felt that we had advertised for bids legally and have followed the law specifically concerning the bidding process. Mayor Fogus said she too, would like to see the money stay local but that she felt rebidding may be a mistake and it was not a chance she was willing to take. After much discussion, the Council proceeded with the meeting and will possibly enter into an executive session to discuss this further.

(B)No Report

(C)No Report. Mayor Fogus said the Arts and Recreation Funds grant is due February 27, 2009 by 4:30 p.m. and asked Councilperson Hanna to be thinking of needs and wants.

(D)Councilperson Shortridge thanked Randy Pickering and his crew for cleaning the streets and performing leave pickup.

(E)Councilperson Bland read the report submitted by OES Director, James Hylton.

(F)No Report.

		(G) Councilperson Swann reported that the CVB is working on a new guide and will distribute about 100,000 of these.
V.	<u>Officer Report(s)</u> a. Police Chief-James Hilton b. Fire Chief-Paul Fogus c. Maintenance Sup.-Randy Pickering	a. Report Attached. b. Report Attached. c. Randy Pickering said that the maintenance crew has been doing water meter reading, shutoffs, recycle, water leak repairs, preparing to paint man lift and other routine tasks.
VI.	<u>Special Reports</u> a. Tri-Cities Power Auth. b. Main St. Revitalization	a. No Report. b. Sadie Fraley was not present but Councilperson Bland said that they have been working on the Dandelion Festival. They have hired bands and have been contacting vendors. She said they will be having a membership drive soon and that there is a possibility of a raffle.
VII.	<u>Citizen Comments</u>	a. None
VIII.	<u>Resolutions / Proclamations</u>	a. None
IX.	<u>Ordinances / Policies</u> a. First reading of an ordinance authorizing the issuance of not more than \$4,000,000 in aggregate principal amount of sewer revenue bonds, series	a. Councilperson Shortridge made a motion to accept the ordinance on first reading; Councilperson Swann seconded the motion. All in favor. Motion carried. b. Councilperson Shortridge made a motion to accept the ordinance on first reading.

	<p>2009 A (West Virginia SRF Program) and addressing issues related thereto.</p> <p>b. First reading of an ordinance authorizing the issuance of not more than \$650,000 in aggregate principal amount of water design revenue bonds, series 2009 A (West Virginia DWTRF Program) and addressing issues related thereto.</p>	<p>Councilperson Hanna seconded the motion. All in favor. Motion carried.</p>
X.	<p><u>Unfinished Business</u></p> <p>a. Sweeney/Leftwich Property on Gum Street</p>	<p>a. Mayor Fogus explained that this was a 45 x 100 foot piece of property and said that Councilperson Honaker and Hanna visited the property before the meeting and to report their findings. They reported that a lot of this property was indeed in the creek and that they seen no problem with the request as it was not large enough to build on and would not benefit anyone but the Sweeney's. Councilperson Honaker made a motion to deed the property to the Sweeney's along with any right of way or easements for the City in case of infrastructure needs. Councilperson Swann seconded the motion. All in favor. Motion carried.</p>
XI.	<p><u>New Business</u></p> <p>a. Approval of 2009-2010 Budget</p>	<p>a. Mayor Fogus presented the budget for 2009-2010 in the amount of \$1,400,855. She explained that the budget does not</p>

		include any pay raises as it was just not possible this year. Recorder Perrow made a motion to approve the 2009-2010 budget. Councilperson Shortridge seconded the motion. All in favor. Motion carried.
XII.	<u>Misc. Remarks</u>	<p>a. Monday, February 16, 2009 is President's Day and City Hall will be closed.</p> <p>b. Monday, February 16, 2009 and Tuesday, February 17, 2009 garbage will be picked up on Tuesday, February 17th.</p>
XIII.	<u>Adjournment</u>	<p>a. Recorder Perrow made a motion to adjourn the meeting at 8:38 p.m. Councilperson Shortridge seconded the motion. All in Favor. Motion Carried.</p>
***	<u>Exec. Session</u>	<p>a. Councilperson Hanna made a motion to enter into an executive session at 7:48 p.m. to discuss the recent bidding process of the sewer collection system. Mayor Fogus requested that Paul Ghosh, City Engineer and Sammie Gee, Bond Counsel be permitted to attend also. Councilperson Shortridge seconded the motion. All in favor. Motion carried.</p> <p>b. Recorder Perrow made a motion to come out of executive session at 8:11 p.m. Councilperson Hanna seconded the motion. All in favor. Motion</p>

		<p>carried.</p> <p>c. Mayor Fogus announced that there was no action taken during the executive session.</p>
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Debra Jo Fogus
Mayor

James Perrow
Recorder

"SPECIAL"
COUNCIL MEETING

MONDAY, FEBRUARY 23, 2009

AT
5:15 P.M.

RE:

- 1. Second Reading of an Ordinance authorizing the issuance of not more than \$4,000,000 in aggregate principal amount of Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and addressing issues related thereto.**

- 2. Second Reading of an Ordinance authorizing the issuance of not more than \$650,000 in aggregate principal amount of Water Design Revenue Bonds, Series 2009 A (West Virginia DWTRF Program) and addressing issues related thereto.**

- 3. Mr. Tim Milline –
Presenting and Discussing Ideas on Ordinances**

**SPECIAL CITY COUNCIL MEETING
MONDAY, FEBRUARY 23, 2009
5:15 P.M.**

Mayor Debbie Fogus called the meeting to order at 5:15 p.m.

Those in attendance were the following: Mayor Debbie Fogus, Recorder James Perrow, Councilpersons—Linda Shortridge, Mike Honaker, Peggy Bland and Lynn Swann. Councilperson Chris Hanna was absent. Also present were Sammie Gee-Bond Counsel and Linda Barker-Financial Clerk.

Three items were on the agenda. The first item was the second reading of an ordinance authorizing the issuance of not more than \$4,000,000.00 in aggregate principal amount of sewer revenue bonds, series 2009 A (West Virginia SRF Program) and addressing issues related thereto. Sammie Gee explained the ordinance and read it by title. She also informed Council that the notice of the public hearing and abstract of bond ordinance will be published in the local paper on Wednesday, February 25th, 2009 and on Wednesday, March 4th, 2009. Mayor Fogus asked if there were any questions or comments--there were none. Councilperson Bland made a motion to approve the second reading of the bond ordinance and Councilperson Swann seconded the motion. All in favor. Motion carried.

The second item on the agenda was the second reading of an ordinance authorizing the issuance of not more than \$650,000.00 in aggregate principal amount of water design revenue bonds, series 2009 A (West Virginia DWTRF program) and addressing issues related thereto. Sammie Gee explained the ordinance and read it by title. Mayor Fogus asked if there were any questions or comments--there were none. Councilperson Shortridge made a motion to approve the second reading of the ordinance and Recorder Perrow seconded the motion. All in favor. Motion carried.

The third item on the agenda was Mr. Tim Milline was to make a presentation and hold a discussion on ordinances, Councilperson Bland arranged this. Mr. Milline did not attend the meeting and no date was

rescheduled for him.

With no further business to come before Council, Councilperson Bland made a motion to adjourn the meeting at 5:47 p.m. and Councilperson Swann seconded the motion. All in favor. Motion carried.

Mayor Debbie Fogus

Recorder James Perrow

The West Virginia Daily News

PO Box 471

Lewisburg, WV 24901

PHONE: (304) 645-1206

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA
COUNTY OF GREENBRIER,
TO WIT:

CITY OF
WHITE SULPHUR SPRINGS
NOTICE OF PUBLIC HEARING
AND ABSTRACT OF BOND
ORDINANCE

Notice is hereby given to any
person interested that on February 23,
2009, the Council of the City of White
Sulphur Springs (the "Issuer") adopted
an ordinance which, among other
things:

1. Authorized the acquisition and
construction of certain additions,
betterments and improvements (the
"Project") to the issuer's existing public
sewerage system (the "System") and the
financing of the cost including,
financing incurred for design costs, not
otherwise provided, thereof through the
issuance of not more than \$4,000,000 in
aggregate principal amount of Sewer
Revenue Bonds, Series 2009 A (West
Virginia SRF Program) (the "Bonds").

2. Directed that the Bonds be
issued in such principal amounts, bear
interest at such rate or rates, not
exceeding the then legal maximum rate,
payable quarterly on such dates, mature
on such dates and in such amounts and
redeemable, in whole or in part, as
prescribed in a supplemental resolution
or in the Loan Agreement by and among
the Issuer, the West Virginia Water
Development Authority and the West
Virginia Department of Environmental
Protection (the "Loan Agreement").

3. Authorized the execution and
delivery of the Loan Agreement.

4. Directed the continuation of a
Revenue Fund and the disposition of the
revenues of the System; provided for the
payment of operating expenses;
provided for the monthly payment of
principal of and interest on the Bonds
when due; provided for the creation of a
Sinking Fund, a Reserve Account and a
Renewal and Replacement Fund for the
bonds; and provided for the use of
excess funds of the System.

I, Louise Bassett,
one of the editors of The West Virginia
Daily News, a daily newspaper of general
circulation published at Lewisburg, West
Virginia, in the County of Greenbrier,
State of West Virginia, do certify that
publication of the advertisement or
advertisements attached hereto was made
in two (2) issues of said
newspaper, dated

25 Feb. 2009
4 Mar. 2009

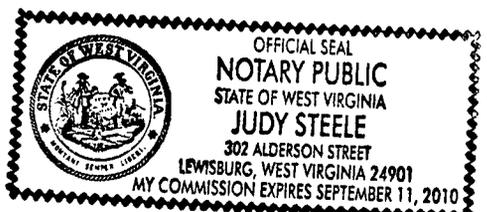
Given under my hand this 5th day
of March, 2009

Louise Bassett
Editor or Publisher

Subscribed and sworn to before me this 5th day of March, 2009.

My commission expires Sept 11, 2010
Judy Steele, Notary Public

Publication Fee: \$ 123.08



5. Directed the creation of a Bond Construction Trust Fund and the disbursement of Bond proceeds.

6. Provided that the Bonds shall not 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 of the System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the Registered Owners of the Bonds to the Net Revenues of the System.

7. Provided certain conditions for the issuance of additional bonds.

8. Provided for insurance coverage on the Project, enforcement of collection of rates and other charges for the System, and other covenants of the Issuer in favor of the Registered Owners of the Bonds.

9. Established the events of default and the remedies of the Registered Owners of the Bonds.

10. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The Issuer contemplates the issuance of the Bonds described in and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of The City of White Sulphur Springs at a regular meeting on March 9, 2009, at 7:00 p.m., prevailing time, in the Council Chambers, City Hall, 34 West Main Street, White Sulphur Springs, West Virginia, and present protests and be heard as to whether the above-described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council is on file with the Recorder for review by interested persons during the office hours of the City Hall.

/s/ Jim Perrow
Recorder

(25fe,4mr)



SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BOND, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-1

\$3,874,614

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF WHITE SULPHUR SPRINGS, a municipal corporation and political subdivision of the State of West Virginia in Greenbrier 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 THREE MILLION EIGHT HUNDRED SEVENTY-FOUR THOUSAND SIX HUNDRED FOURTEEN DOLLARS (\$3,874,614), 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, 2010, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. This Bond is non interest bearing. 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, 2010, as set forth on said EXHIBIT B.

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 (as defined in the hereinafter described

AR-1 SPECIMEN

Bond Legislation) hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Bond Legislation) on the 15th day of the month next preceding a payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

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

This Bond is issued (i) to pay the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) to prepay the Series 2008 A Bonds; (iii) to fund a reserve account for this Bond; and (iv) to pay certain costs of issuance of this Bond 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 Code of West Virginia, 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on February 23, 2009, and a Supplemental Resolution duly adopted by the Issuer on March 23, 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 A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S SEWER REVENUE BONDS, SERIES 1987 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 3, 1988, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$3,500,000 (THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the System, on a parity with the pledge of Net Revenues in favor of the holders of the Prior Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2009 A Bonds Reserve Account"), and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged

for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2009 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount of principal of and interest on this Bond payable in any year and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds; provided however, that so long as there exists in the Series 2009 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered 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 (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 the costs of issuance hereof as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the Registered Owner of this Bond.

AR-1
SPECIMEN

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

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.

AR-1

IN WITNESS WHEREOF, THE CITY OF WHITE SULPHUR SPRINGS
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 April 9, 2009.

[SEAL]

Delise Fogus

Mayor
SPECIMEN

ATTEST:

Shirley W. Lewis

Recorder
SPECIMEN

AR-1

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 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: April 9, 2009.

UNITED BANK, INC., as Registrar



Authorized Officer

AR-1

EXHIBIT A

SPECIMEN

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$675,628	April 9, 2009	(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	
TOTAL	\$ _____		

AR-1

SPECIMEN

EXHIBIT B
DEBT SERVICE SCHEDULE

Period Ending	Principal	Interest	Debt Service
6/1/09			
9/1/09			
12/1/09			
3/1/10			
6/1/10			
9/1/10	32,289.		32,289.
12/1/10	32,289.		32,289.
3/1/11	32,289.		32,289.
6/1/11	32,289.		32,289.
9/1/11	32,289.		32,289.
12/1/11	32,289.		32,289.
3/1/12	32,289.		32,289.
6/1/12	32,289.		32,289.
9/1/12	32,289.		32,289.
12/1/12	32,289.		32,289.
3/1/13	32,289.		32,289.
6/1/13	32,289.		32,289.
9/1/13	32,289.		32,289.
12/1/13	32,289.		32,289.
3/1/14	32,289.		32,289.
6/1/14	32,289.		32,289.
9/1/14	32,289.		32,289.
12/1/14	32,289.		32,289.
3/1/15	32,289.		32,289.
6/1/15	32,289.		32,289.
9/1/15	32,289.		32,289.
12/1/15	32,289.		32,289.
3/1/16	32,289.		32,289.
6/1/16	32,289.		32,289.
9/1/16	32,289.		32,289.
12/1/16	32,289.		32,289.
3/1/17	32,289.		32,289.
6/1/17	32,289.		32,289.
9/1/17	32,289.		32,289.
12/1/17	32,289.		32,289.
3/1/18	32,289.		32,289.
6/1/18	32,289.		32,289.
9/1/18	32,289.		32,289.
12/1/18	32,289.		32,289.
3/1/19	32,289.		32,289.
6/1/19	32,289.		32,289.
9/1/19	32,289.		32,289.
12/1/19	32,289.		32,289.
3/1/20	32,289.		32,289.
6/1/20	32,289.		32,289.
9/1/20	32,289.		32,289.

AR-1 SPECIMEN

Period Ending	Principal	Interest	Debt Service
12/1/20	32,289.		32,289.
3/1/21	32,289.		32,289.
6/1/21	32,289.		32,289.
9/1/21	32,289.		32,289.
12/1/21	32,289.		32,289.
3/1/22	32,289.		32,289.
6/1/22	32,289.		32,289.
9/1/22	32,289.		32,289.
12/1/22	32,289.		32,289.
3/1/23	32,289.		32,289.
6/1/23	32,289.		32,289.
9/1/23	32,289.		32,289.
12/1/23	32,288.		32,288.
3/1/24	32,288.		32,288.
6/1/24	32,288.		32,288.
9/1/24	32,288.		32,288.
12/1/24	32,288.		32,288.
3/1/25	32,288.		32,288.
6/1/25	32,288.		32,288.
9/1/25	32,288.		32,288.
12/1/25	32,288.		32,288.
3/1/26	32,288.		32,288.
6/1/26	32,288.		32,288.
9/1/26	32,288.		32,288.
12/1/26	32,288.		32,288.
3/1/27	32,288.		32,288.
6/1/27	32,288.		32,288.
9/1/27	32,288.		32,288.
12/1/27	32,288.		32,288.
3/1/28	32,288.		32,288.
6/1/28	32,288.		32,288.
9/1/28	32,288.		32,288.
12/1/28	32,288.		32,288.
3/1/29	32,288.		32,288.
6/1/29	32,288.		32,288.
9/1/29	32,288.		32,288.
12/1/29	32,288.		32,288.
3/1/30	32,288.		32,288.
6/1/30	32,288.		32,288.
9/1/30	32,288.		32,288.
12/1/30	32,288.		32,288.
3/1/31	32,288.		32,288.
6/1/31	32,288.		32,288.
9/1/31	32,288.		32,288.
12/1/31	32,288.		32,288.
3/1/32	32,288.		32,288.
6/1/32	32,288.		32,288.
9/1/32	32,288.		32,288.
12/1/32	32,288.		32,288.
3/1/33	32,288.		32,288.

AR-1 SPECIMEN

	Period Ending	Principal	Interest	Debt Service
92	6/1/33	32,288.		32,288.
93	9/1/33	32,288.		32,288.
94	12/1/33	32,288.		32,288.
95	3/1/34	32,288.		32,288.
96	6/1/34	32,288.		32,288.
97	9/1/34	32,288.		32,288.
98	12/1/34	32,288.		32,288.
99	3/1/35	32,288.		32,288.
100	6/1/35	32,288.		32,288.
101	9/1/35	32,288.		32,288.
102	12/1/35	32,288.		32,288.
103	3/1/36	32,288.		32,288.
104	6/1/36	32,288.		32,288.
105	9/1/36	32,288.		32,288.
106	12/1/36	32,288.		32,288.
107	3/1/37	32,288.		32,288.
108	6/1/37	32,288.		32,288.
109	9/1/37	32,288.		32,288.
110	12/1/37	32,288.		32,288.
111	3/1/38	32,288.		32,288.
112	6/1/38	32,288.		32,288.
113	9/1/38	32,288.		32,288.
114	12/1/38	32,288.		32,288.
115	3/1/39	32,288.		32,288.
116	6/1/39	32,288.		32,288.
117	9/1/39	32,288.		32,288.
118	12/1/39	32,288.		32,288.
119	3/1/40	32,288.		32,288.
120	6/1/40	32,289.		32,289.
		3,874,614.		3,874,614.*

*Plus \$2,441.79 one-half percent Administrative Fee paid quarterly. Total fee over life of loan is \$293,014.80.

AR-1

(Form of)

SPECIMEN

ASSIGNMENT

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

Dated: _____, _____.

In the presence of:

{C1518328.1}

BOND REGISTER

2.13

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. AR-1	\$3,874,614	April 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.



Authorized Representative

CITY OF WHITE SULPHUR SPRINGS

SEWER REVENUE BONDS
AND
SEWERAGE SYSTEM BOND INTERIM CONSTRUCTION FINANCING

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS, EXTENSIONS AND ADDITIONS, TO THE EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF WHITE SULPHUR SPRINGS AND THE FINANCING OF THE COST NOT OTHERWISE PROVIDED, THEREOF, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$3,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS AND NOT MORE THAN \$4,200,000 INTERIM CONSTRUCTION FINANCING, CONSISTING OF BOND ANTICIPATION NOTES, GRANT ANTICIPATION NOTES OR A LINE OF CREDIT EVIDENCED BY NOTES, OR ANY COMBINATION OF THE FOREGOING; AUTHORIZING EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE NOTES; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS AND THE NOTES; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITY OF THE HOLDERS OF THE BONDS AND THE NOTES; AND ADOPTING OTHER PROVISIONS RELATING THERETO

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF WHITE SULPHUR SPRINGS:

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, of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law.

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

A. The City of White Sulphur Springs (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Greenbrier County of said State.

B. The Issuer presently owns and operates a public sewerage system, but such system is inadequate and it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be constructed certain improvements, extensions and additions to the existing sewer facilities of the Issuer (the "Project") which constitute properties for the collection of liquid or solid wastes, sewage or industrial wastes (the existing sewer facilities, together with the Project, and any additions thereto or extensions thereof is herein called the "System") at an estimated cost of \$7,174,200, 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 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 the costs of the operation and maintenance of the System, the principal of and interest on the Bonds (as hereinafter defined) and all debt service, reserve account and other payments provided for herein.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds in the aggregate principal amount of not more than \$3,500,000 (the "Bond" or "Bonds") to permanently finance costs of acquisition and construction of the Project, and prior to the issuance thereof and at the option of the Issuer, to issue either prior to, contemporaneously therewith or subsequent thereto its sewerage system bond anticipation notes, grant anticipation notes or a note or notes evidencing a line of credit, or any combination of the foregoing (collectively, the "Notes") in the aggregate principal amount of not more than \$4,200,000 to temporarily finance costs of construction and acquisition of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Notes and the Bonds prior to and during construction or acquisition and for 6 months after completion of construction of the Project; engineering and legal expenses; expenses for estimates of cost and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and Notes and such other expenses as may be necessary or incident to the financing herein authorized, the construction or acquisition of the Project and

the placing of same in operation, and the performance of the things herein required or permitted; provided, that reimbursement to the Issuer for any amounts expended by it for allowable Costs prior to the issuance of the Notes or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project.

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

F. It is in the best interests of the Issuer that the Bonds be sold to the United States Department of Agriculture, Farmers Home Administration (the "Purchaser") pursuant to the terms and provisions of a letter of conditions dated May 1, 1987 (the "Letter of Conditions").

G. There will not be outstanding obligations of the Issuer which will rank prior to or on a parity with the Bonds as to lien and source of and security for payment. The Notes, if issued, will not be payable from the Net Revenues, but shall be payable from proceeds of the Bonds, Grant Receipts, Surplus Revenues or a letter of credit, if any, all as shall be set forth in the Indenture or the Supplemental Resolution authorizing the Notes.

H. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bonds and the Notes, 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.

I. The Issuer has general taxing powers to finance operations of or facilities of the nature of the System, and the Issuer and all subordinate entities reasonably expect to issue less than \$5,000,000 of tax-exempt bonds during the calendar year in which the Bonds are to be issued.

Section 1.03. Bond Legislation Constitutes Contract.
In consideration of the acceptance of the Bonds and the Notes 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 such Noteholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the

registered owners of any and all of such Bonds or Notes, respectively, 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 between any one Note and any other Note 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 text otherwise expressly requires:

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

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

"Bond" or "Bonds" means the Sewer Revenue Bonds, with series designation of the year of issuance thereof, authorized hereby to be issued, and any bonds on a parity therewith authorized to be issued hereunder.

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

"Bond Registrar" means the Issuer or such other registrar for the Bonds as the Issuer shall designate by resolution supplemental hereto or amendatory hereof.

"Code" means the Internal Revenue Code of 1986, as amended, and Regulations promulgated thereunder.

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

"Consulting Engineer" means Dewberry & Davis, Fairfax, Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineer for the System.

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

"Depository Bank" means the bank or trust company which is a member of FDIC and which is designated as such in the Supplemental Resolution, and its successors and assigns.

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

"EPA" means the United States Environmental Protection Agency and any successor to the functions of the EPA.

"EPA Grant" means the grant from Environmental Protection Agency pursuant to the commitment therefor.

"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 may hereafter be constituted.

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

"Grant Agreement" means a written commitment for the payment of the EPA Grant or any of the Other Grants, specifying the amount of such Grant, the terms and conditions upon which such Grant is made and the date or dates or event or events upon which Grant is to be paid to the Issuer; provided that, "EPA Grant Agreement" means only the Grant Agreement relating to the EPA Grant and "Other Grant Agreements" means only those Grant Agreements relating to the Other Grants.

"Grant Receipts" means all moneys received by the Issuer on account of any Grant after the date of issuance of the Notes; provided that "EPA Grant Receipts" means only Grant Receipts on account of the EPA Grant, and "Other Grant Receipts" means only Grant Receipts on account of any or all of the Other Grants.

"Grants" means, collectively, the EPA Grant and the Other Grants, as hereinafter defined.

"Gross Proceeds" means the sum of the following amounts:

(i) Original proceeds, namely, net amounts received by or for the Issuer as a result of the sale of the Bonds, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Bonds;

(ii) Investment proceeds, namely, amounts received at any time by or for the Issuer, such as interest and dividends, resulting from the investment of any original proceeds (as referenced in clause (i) above) or investment proceeds (as referenced in this clause (ii)) in Nonpurpose Investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Bonds;

(iii) Sinking fund proceeds, namely, amounts, other than original proceeds or investment proceeds (as referenced in clauses (i) and (ii) above) of the Bonds, which are held in the Sinking Funds and any other fund to the extent that the Issuer reasonably expects to use such other fund to pay Debt Service on the Bonds;

(iv) Investment Property pledged as security for payment of Debt Service on the Bonds by the Issuer;

(v) Amounts, other than as specified in this definition, used to pay Debt Service on the Bonds; and

(vi) Amounts received as a result of investing amounts described in this definition.

"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, and for the furnishing by the Issuer of miscellaneous services.

"Herein" means in this Bond Legislation.

"Indenture" or "Trust Indenture" means the Trust Indenture which may be entered into between the Issuer and the Trustee relating to the Notes and all supplements or amendments thereto.

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

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes.

"Issuer" or "City" means the City of White Sulphur Springs, in Greenbrier County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Letter of Conditions" means the letter of conditions of the Purchaser dated May 1, 1987.

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

"Net Proceeds" means the face amount of the Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Reserve Accounts.

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

"Nonpurpose Investment" means any Investment Property which is acquired with the Gross Proceeds of the Bonds and is not acquired in order to carry out the governmental purpose of the Bonds.

"Notcholder," "Holder of the Notes" or any similar term means the person, whenever used herein with respect to an outstanding Note or Notes, in whose name such Note is registered.

"Notes" means collectively, the not more than \$4,200,000 in aggregate principal amount of sewerage system bond anticipation notes, grant anticipation notes or notes evidencing a line of credit, originally authorized hereby, and unless the context clearly indicates otherwise, the term "Notes" includes any refunding notes of the Issuer.

"Notes Construction Trust Fund" means the Notes Construction Trust Fund which may be established pursuant to the Indenture.

"Notes Registrar" means the bank to be designated as such in the Indenture or the Supplemental Resolution and its successors and assigns.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of fiscal agents, the Registrar, Paying Agent, Depository Bank and the Trustee (all as hereinafter defined), other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds or Notes, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Original Notes Purchaser" means, in the event Bond Anticipation Notes are issued, Butcher & Singer, Inc., Charleston, West Virginia, or such other original purchaser of the Bond Anticipation Notes as shall be named in a resolution supplemental hereto, and, in the event a note or notes evidencing a line of credit are issued, such bank or banks as shall be named in a resolution supplemental hereto.

"Other Grants" means any grant other than the EPA Grant hereafter received by the Issuer to aid in financing any Costs.

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

"Paying Agent" means the bank or banks or other entity designated as such for the Bonds and/or the Notes in the Indenture or in the Supplemental Resolution or such entity or authority as may be designated by the Issuer.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

"Project" shall have the meaning stated in Section 1.02(B) above.

"Project Construction Fund" means the Project Construction Fund established by Section 5.01 hereof.

"Purchaser" means, with respect to the Bonds, United States Department of Agriculture, Farmers Home Administration and any successor thereof.

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

(a) Government Obligations;

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

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

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

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

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

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

(h) The Investment Agreement which may be entered into by and between the Trustee and the bank designated as "Investment Bank" in the Supplemental Resolution;

(i) The West Virginia "consolidated fund" managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6, of the West Virginia Code of 1931, as amended; and

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

"Recorder" means the City Recorder of the Issuer.

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

"Registrar" means as appropriate, either the Bond Registrar or the Notes Registrar or both.

"Regulations" means temporary and permanent regulations promulgated under the Code.

"Revenue Fund" means the Revenue Fund established by Section 5.01 hereof.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolutions authorizing the sale of the Notes or the Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Notes or the Bonds, as the case may be, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including the Sinking Fund, the Reserve Account therein and the Depreciation Fund, the proceeds of which Bonds or other obligations are to be used to pay Costs of the Project.

"System" means the works for the collection and/or treatment, purification and disposal of sewage, in its entirety or any integral part thereof, owned by the Issuer and under the supervision and control of a sanitary board, and any extensions, improvements or betterments thereto hereafter constructed or acquired from any sources whatsoever and includes the Project.

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

"Trustee" means the banking institution designated as trustee for the Noteholders under the Indenture, if any, its successors and assigns.

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

ARTICLE II

AUTHORIZATION OF CONSTRUCTION AND ACQUISITION OF THE PROJECT

Section 2.01. Authorization of Construction and Acquisition of the Project. There is hereby authorized the construction and acquisition of the Project, at an estimated cost of \$7,174,200, 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 Notes and the Bonds hereby authorized shall be applied as provided in the Indenture, if any, and Article VI hereof, respectively.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF BONDS

Section 3.01. Authorization of Bonds. Subject and pursuant to the provisions hereof, the Bonds of the Issuer, to be known as "Sewer Revenue Bonds, Series 1987," are hereby authorized to be issued in the aggregate principal amount of not exceeding \$3,500,000 for the purpose of permanently financing a portion of the Costs of the Project, which may be accomplished through the refunding of bond anticipation notes, if issued, to temporarily finance a portion of the Costs of the Project.

Section 3.02. Description of Bonds. The Bonds shall, except as set forth below, be initially issued as a single Bond, No. R-1, fully registered, and shall be dated the date of delivery thereof. However, if provided for in the Supplemental Resolution, the Bonds may be issued in more than one series, as a single Bond of each series, and may be dated a date other than the date of delivery thereof. The Bonds shall bear interest from date of delivery, payable monthly at the rate of not exceeding 12% per annum, and shall be sold for the par value thereof.

The Bonds shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, shall be payable as provided in the Bond form hereinafter set forth, and shall be in the exact principal amount and shall have such other terms not inconsistent with this Ordinance, as shall be set forth in the Supplemental Resolution and such Bond Form.

Section 3.03. Negotiability, Registration, Transfer and Exchange of Bonds. Subject to the provisions for transfer of registration set forth below, the Bonds shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia. The Bonds may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Bonds for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Bond Registrar.

Whenever the Bonds shall be surrendered for registration of transfer, the Issuer shall execute and deliver

a new Bond in authorized denominations, for a like aggregate principal amount. The Bond Registrar shall require the payment by the Bondholder requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Bond Registrar with respect to such transfer.

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

Section 3.04. Bond Registrar. The issuer shall initially be the Bond Registrar and will keep or cause to be kept at its office, sufficient books for the registration and transfer of the Bonds, and, upon presentation for such purpose, the Bond Registrar shall, under such reasonable regulations as it may prescribe, register the Bonds initially issued pursuant hereto and register the transfer, or cause to be registered, on such books, the transfer of the Bonds as hereinbefore provided.

The Bond Registrar shall accept the Bonds for registration or transfer only if ownership thereof is to be registered in the name of an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust, and the federal employer identification number and date of each trust and the name of the trustee of each trust.

Section 3.05. Execution of Bonds. The Bonds shall be executed in the name of the Issuer by the Mayor and its corporate seal shall be affixed thereto and attested by the City Recorder. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case the Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion

issue and deliver a new Bond of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bonds or in lieu of and substitution for the Bonds destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Bonds so surrendered shall be cancelled and held for the account of the Issuer. If the Bonds shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer may pay the same, and, if such Bonds be destroyed, stolen or lost, without surrender thereof.

Section 3.07. Bonds Secured by Pledge of Net Revenues; Not To Be Indebtedness Of The Issuer. The payment of the debt service of the Bonds shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the System. The Net Revenues derived from the System in an amount sufficient to pay the principal of and interest on the Bonds and to make the payments as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due. The Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. The general funds of the Issuer are not liable, and neither the full faith and credit nor the taxing power of the Issuer is pledged for the payment of the Bonds.

Section 3.08. Form of Bonds. Subject to the provisions hereof, the text of the Bonds and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or any resolution adopted after the date of adoption hereof and prior to the issuance thereof:

(FORM OF BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BOND, SERIES 1987

\$ _____

No. R-1

Date: _____

FOR VALUE RECEIVED, the CITY OF WHITE SULPHUR SPRINGS (herein called the "Issuer") promises to pay to the order of the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (the "Government"), at its National Finance Office, St. Louis, Missouri, 63103, or at such other place as the Government may hereafter designate in writing, or its registered assigns (the "Registered Owner") the principal sum of _____ DOLLARS (\$ _____), plus interest on the unpaid principal balance at the rate of (____%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following the date of delivery of the Bonds and continuing on the corresponding day of each month for the first 24 months after the date hereof and \$ _____, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to the Issuer as requested by the Issuer and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the reverse hereof.

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer. Refunds and extra payments, as defined in the regulations of

the Farmers Home Administration according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of the Issuer to pay the remaining installments as scheduled herein.

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

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

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

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

This Bond is issued to finance permanently a portion of the costs of acquisition and construction of additions, extensions and improvements for the existing sewerage facilities of the Issuer, and together with any additional

bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction and acquisition of additions, extensions and improvements for the sewerage system (the "System") of the Issuer, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest thereon except from the special fund so provided.

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

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

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13, of the West Virginia Code (herein called the "Act"), and with an ordinance and supplemental resolution of the Issuer duly enacted and adopted, respectively (the "Bond Legislation").

This Bond shall be exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

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

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

IN WITNESS WHEREOF, the CITY OF WHITE SULPHUR SPRINGS has caused this Bond to be executed by its Mayor and its corporate seal to be herunto affixed or imprinted hereon and attested by its City Recorder, all as of this _____ day of _____, 1987.

CITY OF WHITE SULPHUR SPRINGS
(Name of Borrower)

[CORPORATE SEAL]

(Signature of Executive Official)

Mayor
(Title of Executive Official)

One West Main Street
(P.O. Box No. or Street Address)

White Sulphur Springs, West Virginia 26582
(City, State and Zip Code)

ATTEST:

(Signature of Attesting Official)

City Recorder
(Title of Attesting Official)

(Form of)

RECORD OF ADVANCES

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

TOTAL \$ _____

(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:

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

Date of Registration	In Whose Name Registered	Signature of Registrar
_____	_____	_____
_____	_____	_____
_____	_____	_____

ARTICLE IV

NOTES

Section 4.01. Authorization and General Terms. In order to pay certain Costs of the Project pending receipt of the Grant Receipts and payment of all advances of principal of the Bonds, the Issuer may issue and sell its Notes in the aggregate principal amount of not to exceed \$4,200,000. The Notes may be in the form of bond anticipation notes, grant anticipation notes or as evidence of a line of credit from a commercial bank or other lender, at the discretion of the Issuer, as shall be set forth in a resolution or resolutions supplemental hereto. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such dates and shall mature on such date or dates and be subject to such prepayment or redemption and shall have such other provisions not inconsistent with this Ordinance as shall be provided in the Indenture and the Supplemental Resolution.

Section 4.02. Terms of and Security for Bond Anticipation Notes; Trust Indenture. The Bond Anticipation Notes, if issued, shall be in fully registered form, in the denomination of \$5,000 or any integral multiple thereof, with such terms and secured in the manner set forth in the Indenture, if applicable (which Indenture is substantially the form to be executed and delivered by the Issuer shall be approved by a supplemental resolution), or supplemental resolution, if no Indenture is used.

Section 4.03. Notes are Special Obligations. The Notes shall be special obligations of the Issuer payable as to principal and interest solely from the respective sources described in the Indenture or supplemental resolution. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable, and neither the full faith and credit nor the taxing power of the Issuer is pledged for the payment of the Notes. The Holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth in the Indenture or the Supplemental Resolution.

Section 4.04. Letters of Credit. As additional security for the Notes, the Issuer may obtain a letter or letters of credit from a bank or banks, pursuant to which such bank or banks would agree to pay to the Trustee, upon presentation by the Trustee of certain certificates, the sum or

sums set forth therein but not to exceed \$3,500,000 in the aggregate. In the event of a draw under any such letter of credit, the Issuer shall issue its refunding notes to the bank issuing such letter of credit. Any such letter of letter of credit shall be authorized and shall have such terms as shall be set forth in a resolution supplemental hereto.

ARTICLE V

SYSTEM REVENUES AND APPLICATION THEREOF;
DISPOSITION OF BOND PROCEEDS

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are established with and shall be held by, the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund;
- (2) Depreciation Fund;
- (3) Project Construction Fund; and
- (4) Reserve Account.

Section 5.02. Covenants of the Issuer as to System Revenues and Funds. So long as the Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Account, a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the Bonds remaining unpaid, together with interest accrued to the date of such payment, the Issuer further covenants with the holder of the Bonds as follows:

(A) REVENUE FUND. The entire Gross Revenues derived from the operation of the System, and all parts thereof, shall be deposited as collected by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided herein 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 herein.

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

(i) The Issuer shall first each month pay from the moneys in the Revenue Fund all current Operating Expenses,

(ii) Thereafter, from the moneys remaining in the Revenue Fund the Issuer shall next, on or before the 15th day of each month, transfer from

the Revenue Fund and remit to the National Finance Office designated in the Bonds or otherwise the amount required to pay the interest on the Bonds, and to amortize the principal of the Bonds over the life of the Bond issue.

(iii) The Issuer shall next, on or before the 15th day of each month, transfer from the Revenue Fund and deposit with the Depository Bank in the Reserve Account, $1/12$ th of $1/10$ th of the amount of principal and interest becoming due on the Bonds in any year until the amount in the Reserve Account equals the sum of \$23,058, such sum being herein called the "Minimum Reserve." After the Minimum Reserve has been accumulated in the Reserve Account, the Issuer shall monthly deposit into the Reserve Account such part of the moneys remaining in the Revenue Fund, after such provision for payment of monthly installments on the Bonds and for payment of operating expenses of the System, as shall be required to maintain the Minimum Reserve in the Reserve Account. Moneys in the Reserve Account shall be used solely to make up any deficiency for monthly payments of the principal of and interest on the Bonds as the same shall become due or for prepayment of installments on the Bonds, or for mandatory prepayment of the Bonds as hereinafter provided, and for no other purpose; provided, however, that when the Minimum Reserve has been accumulated in the Reserve Account, all earnings thereon shall be transferred at least once a year to and deposited in the Revenue Fund and used for any lawful purpose of the System.

(iv) The Issuer shall next, on or before the 15th day of each month, transfer from the Revenue Fund and deposit in the Depreciation Fund, the moneys remaining in the Revenue Fund and not needed for payment of principal of or interest on the Bonds, until there has been accumulated in the Depreciation Fund the aggregate sum of \$215,000, and thereafter such sums as shall be required to maintain such amount therein. Moneys in the Depreciation Fund shall be used first to make up any deficiencies for monthly payments of principal of and

interest on the Bonds as the same become due, and next to restore to the Reserve Account any sum or sums transferred therefrom. Thereafter, and provided that payments into the Reserve Account are current and in accordance with the foregoing provisions, moneys in the Depreciation Fund may be withdrawn by the Issuer and used for extraordinary repairs and for replacements of equipment and improvements for the System, or any part thereof.

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

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

The Depository Bank is hereby designated as the Fiscal Agent for the administration of the Reserve Account and the Depreciation Fund as herein provided, and all amounts required therefor will be deposited therein by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written directions from the Issuer stating the amount remitted for deposit into each such Fund.

All the funds provided for in this Section shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Bonds and the interest thereon, but the aforesaid Commission and Depository Bank shall not be a trustee as to such funds.

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

The Depository Bank shall keep the moneys in the various funds and accounts described herein invested and reinvested to the fullest extent practicable in Qualified Investments at the direction of the Issuer.

All investment earnings on moneys in the Sinking Fund and Reserve Account (after the Minimum Reserve has been accumulated therein) shall be returned, not less than once each year, by the Depository Bank to the Issuer, for deposit in the Revenue Fund, and such amounts shall be applied in full to the next ensuing installment of principal of and interest due on the Bonds. All investment earnings on moneys in the Depreciation Fund shall be credited to such fund.

(C) CHANGE OF DEPOSITORY BANK. The Issuer may designate another bank insured by FDIC as Depository Bank if the aforesaid bank should cease for any reason to serve or if the Governing Body determines by resolution that said bank or its successor should no longer serve as Depository Bank. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser.

(D) USER CONTRACTS. The Issuer shall, prior to delivery of the Bonds, provide evidence that there will be at least 1,476 bona fide users upon the System on completion of the Project, and must obtain a \$250 user's contribution from each such new user and deposit in the Notes Construction Account established pursuant to the Indenture all such user contributions collected.

(E) CHARGES AND FEES. The Issuer shall remit from the Revenue Fund to the Registrar, the Paying Agent and the Depository Bank such additional sums as shall be necessary to pay the charges and fees of the Registrar, the Paying Agent and the Depository Bank then due.

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

(G) ARREARAGES. 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.

(H) REMITTANCES. All remittances made by the Issuer to the Commission of the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

(I) GROSS REVENUES. The Gross Revenues of the System shall only be used for purposes of the System.

Section 5.03. Application of Bond Proceeds; Project Construction Fund. The proceeds of sale of the Bond shall be deposited on receipt by the Issuer with the Depository Bank in the Project Construction Fund. The moneys in the Project Construction Fund in excess of the amount insured by FDIC shall be secured at all times by such bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Moneys in the Project Construction Fund shall be expended by the Issuer solely for the purposes provided herein.

Amounts in the Project Construction Fund shall be disbursed for Costs of the Project (including, but not limited to, payment of any borrowings heretofore incurred by the Issuer for payment of Costs of the Project) upon filing in the official records pertaining to such account of a certificate of the Issuer describing such disbursement, setting forth the portion, if any, of the Net Proceeds of the Bond to be used for a Private Business Use or to make or finance a loan (other than a loan constituting a Nonpurpose Investment) to other than a state or local governmental unit and certifying that there has been compliance with the provisions of Section 6.17 hereof relating to the Private Business Use limitation and the private loan limitation. Amounts, if any, remaining in the Project Construction Fund shall, upon receipt from the Issuer certifying that no further amounts are required to be disbursed for Costs of the Project, be used for redemption of a portion of the Bond on the next succeeding interest payment date and the Project Construction Fund shall thereupon be closed.

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

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

Section 5.04. Tap Fees. All tap fees received shall be placed into the Project Construction Fund and used for such authorized purposes.

ARTICLE VI

GENERAL COVENANTS

Section 6.01. General Statement. So long as the Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Account a sum sufficient to prepay the entire principal of the Bonds remaining unpaid, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Purchaser.

Section 6.02. Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide Gross Revenues in each Fiscal Year sufficient to produce Net Revenues equal to not less than 110% of the annual debt service on the Bonds, and to make the payments required to be made into the various funds and accounts established herein and all the necessary expenses of operating and maintaining the System during such fiscal Year, and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

Section 6.03. Sale of the System. The System will not be sold without the prior written consent of the Purchaser so long as the Bond is outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 6.04. Issuance of Additional Parity Bonds. No additional parity bonds payable out of the revenues of the System shall be issued after the issuance of the Bonds pursuant hereto except with the prior written consent of the Purchaser.

Section 6.05. Insurance and Bonds. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the Bond remains outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(a) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground structures of the System in an amount equal to the actual cost thereof. In the event of any damage to

or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(b) Public Liability Insurance, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the Bonds.

(c) Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

(d) Workers' Compensation Coverage for all Employees of th District Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each prime contractor, and such payment bonds will be filed with the Clerk of the County Commission of said County prior to commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39.

(e) Fidelity Bonds will be provided as to every member of the Governing Body and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the Issuer in an amount at least equal to the total funds in the custody of any such person at any one time, and

initially in the amount of \$50,000 upon the City Recorder, provided, however, that no bond shall be required insofar as custody of the Project Construction Account is concerned so long as checks thereon require the signature of a representative of the Purchaser.

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

Section 6.06. Fiscal Year; Budget. While the Bond is outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a Fiscal Year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than 30 days prior to the beginning of each Fiscal Year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such Fiscal Year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each Fiscal Year.

If for any reason the Issuer shall not have adopted the Annual Budget before the first day of any Fiscal Year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the year next preceding by more than 10%; and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 6.07. Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer and on file with the City Clerk on the date of adoption hereof, subject to permitted changes.

Section 6.08. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

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

Section 6.09. Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the Bond is outstanding.

Section 6.10. No Competition. The Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

Section 6.11. 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 charges the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of

the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 6.12. 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 waterborne 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, 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 therefore.

Any such house, dwelling or building from which emanates sewage or waterborne 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 6.13. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation or the Indenture, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Trustee, if any, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, and the Indenture, if any, the need for such moneys for the purposes set forth herein and in the Indenture, if any, and the specific restrictions and provisions set forth in this Section 6.13 and in the Indenture.

Except as provided in the Indenture, if any, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss

realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Trustee, if any, 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 Trustee, if any, the Depository Bank, or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

Section 6.14. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Bonds, so that the Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 6.15. Rebates of Excess Arbitrage Earnings. The Issuer hereby covenants to rebate to the United States Government the amounts required by Section 148 of the Internal Revenue Code of 1986, and to take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of the interest on the Bonds.

Section 6.16. Initial Schedule of Rates and Charges; Rules. A. The schedule of rates and charges for the services and facilities of the System shall be as set forth in the Ordinance of the Issuer enacted May 11, 1987.

B. There shall not be any discrimination or differential in rates between customers in similar circumstances.

C. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the Issuer or any department, agency, officer or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other revenues of the System.

D. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

E. The Issuer, to the extent permitted by law, will not accept payment of any water bill from a customer served with water and sewer services by the Issuer without payment at the same time of a sewer bill owed by such customer for the same premises.

Section 6.17. 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 Bonds is 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 Bonds during the term thereof is, under the terms of the 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 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 Bonds during the term thereof is, under the terms of the 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 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project.

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

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 Bonds to be, directly or indirectly, "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

Section 6.18. Covenants to Also Apply to Notes. In the event Notes are issued pursuant to this Ordinance, all covenants, agreements, and provisions contained herein shall, where applicable, inure to the benefit of the registered owners of the Notes, and to the Trustee, if any, for and on behalf of the registered owners of the Notes, until payment in full of such Notes.

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.01. Events of Default. A. The "Events of Default" with respect to the Notes shall be as set forth and described in the Indenture.

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

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

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in the Bond Legislation, the Indenture or in the 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 Purchaser, any bank or banking association holding any fund or account hereunder or any other Holder of the Bonds; or

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

Section 7.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a BAN, GAN or Bonds, as the case may be, 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, (iii) bring suit upon the BAN, GAN or Bonds, as the case may be, (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 BAN, GAN or Bonds, as the case may be, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the BAN, GAN or Bonds, or the rights of such Registered Owners.

Section 7.03. Appointment of Receiver. Any Registered Owner of the Bonds may, by proper legal action, compel the performance of the duties of the Issuer under the

Bond Legislation and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds any Registered Owner of the Bonds shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of 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 the 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 do.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of for Reserve Account, Depreciation Fund or other funds or accounts 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 the 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 the 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 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 possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owner of the Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of the 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 VIII

MISCELLANEOUS

Section 8.01. Defeasance of Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Bonds, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Section 8.02. Defeasance of Notes. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Notes, the principal of and interest due or to become due thereon, at the times and in the manner set forth in the Indenture, then with respect to the Notes, this Bond Legislation, the Indenture, if any, and the pledges of Grant Receipts and other moneys and securities pledged thereby, and all covenants, agreements and other obligations of the Issuer to the Holders of the Notes shall thereupon cease, terminate and become void and be discharged and satisfied.

Section 8.03. Amendment or Modification of Bonds Legislation. No material modification or amendment of this Resolution, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Bonds or the Notes shall be made without the consent in writing of the Registered Owners of 66-2/3% or more in principal amount of the Bonds or Notes so affected and then outstanding; provided, that no change shall be made in the maturity of the Bonds or any Note or Notes or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds or Notes respectively, required for consent to the above-permitted amendments or modifications.

Section 8.04. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered

Owners of the Bonds and Notes, and no change, variation or alteration of any kind of the provisions of the shall be made in any manner, except as in the Bond Legislation provided.

Section 8.05. Severability of Invalid Provisions. If any section, paragraph, clause or provision of the Bond Legislation 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 the Bond Legislation, the Indenture, the Bonds or the Notes.

Section 8.06. 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 8.07. Modification or Amendment. The Bond Legislation may not be modified or amended after final passage without the prior written consent of the Purchaser.

Section 8.08. Delivery of Bond No. R-1. The Mayor and City Clerk are hereby authorized and directed to cause Bond No. R-1, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 8.09. Severability of Invalid Provision. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Bonds or the Notes.

Section 8.10. Conflicting Provisions Repealed. All ordinances, orders or resolutions, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflict, hereby repealed; provided that this Section shall not be applicable to the Loan Resolution (Form FmHA 442-47).

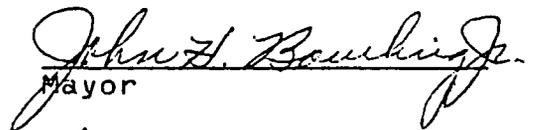
Section 8.11. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 8.12. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the enactment of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, City Recorder and members of the 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 8.13. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Section 8.14. 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 14 consecutive days, with at least 6 full days intervening between each publication, in The West Virginia Daily News, a qualified newspaper of general circulation in the City of White Sulphur Springs, together with a notice stating that this Bond Legislation has been adopted and that the Issuer contemplates the issuance of the Bonds and the Notes, and that any person interested may appear before the City Council upon a date certain, not less than 10 days subsequent to the date of the first publication of this Bond Legislation and notice, and present protests, and that a certified copy of the Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading - 10 August, 1987
Passed on Second Reading - 14 September, 1987
Passed on Final Reading
Following Public
Hearing - 14 September, 1987


Mayor


City Recorder

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the CITY OF WHITE SULPHUR SPRINGS on the 14 day of September 1987.

Dated this 14 day of September, 1987.

[SEAL]


City Recorder

07/09/87

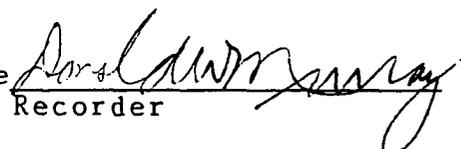
CITY OF WHITE SULPHUR SPRINGS
1 WEST MAIN STREET
WHITE SULPHUR SPRINGS, WV 24986
(304) 536-1454

MAYOR
John H. Bowling, Jr.
RECORDER
Donald W. Murray
FINANCIAL SECRETARY
Margaret L. Lewis
POLICE CHIEF
Luther C. Stacy
COUNCILPERSONS
Edwin F. Rickel
Barbara S. Wooding
Leo S. Lewis
E. T. Gillespie
Rhendal H. Butler

March 3, 1988

I, Donald W. Murray, Recorder for the City of White Sulphur Springs, do hereby certify that the foregoing Resolution is taken from the official records of the City of White Sulphur Springs.

Signature


Recorder

CITY OF WHITE SULPHUR SPRINGS

Sewer Revenue Bonds, Series 1987

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY, INTEREST RATE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 1987 OF THE CITY OF WHITE SULPHUR SPRINGS; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS

WHEREAS, the city council (the "Governing Body") of the City of White Sulphur Springs (the "Issuer"), has duly and officially enacted a bond and notes ordinance, effective September 14, 1987 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES AND THE CONSTRUCTION OF BETTERMENTS TO EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF WHITE SULPHUR SPRINGS AND THE FINANCING OF THE COST NOT OTHERWISE PROVIDED, THEREOF, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$3,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, AND AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$4,200,000 IN BOND ANTICIPATION NOTES, GRANT ANTICIPATION NOTES OR A LINE OF CREDIT EVIDENCED BY NOTES, OR ANY COMBINATION OF THE FOREGOING; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITY OF THE HOLDERS OF THE BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds of the Issuer (the "Bonds"), in an aggregate principal amount of not to exceed \$3,500,000, to be issued in a single series, all in accordance with West Virginia Code of 1931, as amended, Chapter 16, Article 13 (the "Act"); and in the Bond Ordinance it is provided that the exact principal amount, maturity date, interest rate 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 United States Department of Agriculture, Farmers Home Administration (the "Purchaser"), has agreed to purchase the Bonds, pursuant to a commitment letter of the Purchaser dated May 4, 1987; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted and that the Bonds be issued and sold to the Purchaser, that the exact principal amount, the maturity date, the redemption provisions, the interest rate and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WHITE SULPHUR SPRINGS:

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 1987, of the Issuer, originally represented by a single Bond, numbered R-1, in the principal amount of \$3,500,000. The Series 1987 Bonds shall be dated the date of delivery thereof, shall finally mature March, 2028, shall bear interest at the rate of 5.75% per annum, and shall be payable as follows:

Monthly installments of interest only, commencing the month following the date of delivery, and continuing on the 1st day of each month for the first 24 months after the delivery thereof, and thereafter \$18,935, covering principal and interest, on the 1st day of each month, to and including March, 2028. Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer.

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 appoint and designate itself as Registrar for the Bonds and the performance by the Issuer of the duties of Registrar are hereby authorized, approved and directed.

Section 4. The Issuer does hereby appoint and direct the West Virginia Municipal Bond Commission, Charleston, West Virginia, as Paying Agent for the Bonds.

Section 5. The Issuer does hereby appoint the Bank of White Sulphur Springs, White Sulphur Springs, West Virginia, as Depository Bank under the Bond Ordinance.

Section 6. The Mayor and City Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about March 3, 1988, to the Purchaser.

Section 7. The financing of the Project in part with proceeds of the Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 8. Section 6.17 of the Bond Ordinance is amended and reenacted to read as follows:

Section 6.17. Tax Covenants. In order to assure the tax exempt status of the Bonds the Issuer hereby warrants and covenants as follows:

(a) The Issuer presently intends to operate the Project or cause it to be operated as a sewage facility until Payment of the Bonds.

(b) No portion of the Project has been placed in service by the Issuer, any other "substantial user" of the Project within the meaning of Regs. Section 1.103-8(a)(5), or any "related person" to the Issuer or such other substantial users as of one (1) year prior to the date of issuance of the Bonds.

(c) The Bonds are neither directly nor indirectly "federally guaranteed" (as defined under Section 149(b) of the Code), nor will the Issuer allow the Bonds to be so guaranteed.

(d) Unless the Issuer shall have received an opinion of Bond Counsel to the effect that such use of the proceeds of the Bonds in contravention of the provisions of this Section 6.17(d) will not result in the interest earned on the Bonds being required to be included in the gross income of the holder of the Bonds or any former holder thereof (other than a "substantial user" of the Project or a related person thereto) for Federal income tax purposes, the following restrictions shall be observed with respect to the use of the proceeds of the Bonds all in accordance with restrictions set forth in Sections 147(c), 147(d),

147(e), 144(a)(5), 144(a)(7), 144(a)(8) and 144(a)(11) of the Code:

(1) no portion of the proceeds of the Bonds has been or will be used to provide any of the following: any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility, racetrack, airplane, skybox or other private luxury box, any health club facility, any facility primarily used for gambling, any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or (directly or indirectly) for the acquisition of land, or an interest therein, to be used for farming purposes or to provide depreciable farm property;

(2) less than twenty-five percent (25%) of the proceeds of the bonds has been or will be used to provide a facility the primary purpose of which is any of the following: retail food and beverage services (excluding grocery stores), automobile sales or service, the provision of recreation or entertainment (and not specifically prohibited in (1)); and

(3) no portion of the proceeds of the Bonds has been or will be used for the acquisition of existing property except upon compliance with the incurring of the "rehabilitation expenditures" required under Section 147(d) of the Code or for a facility used primarily for residential real property for family units and less than twenty-five percent (25%) of the proceeds of the Bonds has been or will be used (directly or indirectly) for acquiring land or an interest therein.

(e) The "average maturity" of the Bonds does not exceed one hundred twenty percent (120%) of the "average reasonably expected economic life" of the facilities being financed with the proceeds of the Bonds, within the meaning of Section 147(b) of the Code. The Issuer will not permit any change in the Project that would, at the time made, cause the "average reasonably expected economic life" of the components of the Project to be less than the "average reasonably expected economic life" of the components of the Project set forth in the certifications or representations of the Issuer delivered on the date of the issuance of the Bonds, without first providing the Trustee with an opinion

of Bond Counsel that such changes will not adversely affect the exemption of interest on the Bonds from Federal income taxation.

(f) No person, firm or corporation who was a "substantial user," within the meanings ascribed to such term under Regs. Section 1.103-8(a)(5), or who was a related person to such substantial user before the date of issuance of the Bonds and who will be a "substantial user" of the Project or who was a related person to such substantial user after it is completed and placed into operation, will receive, directly or indirectly, any proceeds from the issuance and sale of the Bonds.

(g) Other than the Bonds, there are no obligations to be sold or which have been sold within ninety (90) days of the date the Bonds are issued, pursuant to a common plan of marketing at substantially the same rate of interest, which have a common or pooled security available to pay debt service on obligations, and which together with the Bonds, would be considered a single issue for purposes of Section 144(a)(1) of the Code pursuant to Section 144(a)(6) of the Code and Rev. Rul. 81-216, 1981-36 I.R.B. 6 (October 8, 1981) and the Regs. proposed or adopted with respect thereto.

(h) Ninety-five percent (95%) or more of the sum of the net proceeds of the Bonds as defined in Section 150(a)(3) of the Code (i.e., the proceeds of the Bonds reduced by amounts in a reasonably required reserved or replacement fund) plus the investment earnings thereon will be used to provide either land or property of a character subject to the allowance for depreciation under the Code within the meaning of Section 144(a)(1) of the Code and Regs. Section 1.103-8(a)(1). For purposes of the preceding sentence, amounts that were paid prior to the Official Action (August 10, 1987) by the Issuer or a related person in or about acquisition, construction, renovation and/or equipping of the Project shall not be treated as amounts expended for land or property subject to the allowance for depreciation.

(i) To the best of the Issuer's knowledge, neither the Issuer, nor any "substantial user" of the Project nor any "related person" of the Issuer (as such terms are used in Section 147(a) of the Code) plans to purchase, hold or own the Bonds or any part thereof.

(j) The information contained in the Issuer's Form 8038 is true and correct.

(k) The full amount of the Bonds has been allocated and in compliance with the Governor's Executive Order No. 18-86 by allocation from the "State Allocation" (as defined in such Executive Order).

(l) Construction of the Project will be performed with all reasonable dispatch and is reasonably expected to be completed on or before December 1, 1991, provided, however, that under all circumstances, an amount equal to not less than eighty-five percent (85%) of the spendable proceeds of the Bonds will be expended within three years from the date of issuance of the Bonds. For purposes of the preceding sentence, the term "Spendable Proceeds" shall have the meaning set forth in Regs. Section 1.103-14(b)(2)(iii), as the same may from time to time be amended, modified or supplemented. In addition, the Issuer has, or within six (6) months after the date of issuance of the Bonds will have, incurred a substantial binding obligation to commence the Project. Such substantial binding obligation will be incurred to an unrelated third party in an amount not less than two and one-half percent (2-1/2%) of the principal amount of the Bonds or \$100,000, whichever is less.

(m) The Issuer covenants not to pay issuance costs out of Bond proceeds in an amount in excess of two percent (2%) of the aggregate face amount of the Bonds, within the meaning of Section 147(g) of the Codes. For purposes of the preceding sentence, issuance costs shall include, but not be limited to, the following:

- (1) Underwriter's spread (whether realized directly or derived through purchase of the Bonds at a discount below the price at which they are expected to be sold to the public);
- (2) Counsel fees (including Bond counsel, Underwriter's counsel, Issuer's counsel);
- (3) Financial advisor fees incurred in connection with the Bonds;
- (4) Rating Agency fees;
- (5) Trustee fees incurred in connection with the Bonds;
- (6) Paying agent and certifying and authenticating agent fees related to issuance of the Bonds;

- (7) Accountant fees related to issuance of the Bonds;
- (8) Printing costs (for the Bonds and of preliminary and final offering materials);
- (9) Costs incurred in connection with the required public approval process (e.g., publication costs for public notices generally and costs of the public hearing); and
- (10) Costs of engineering and feasibility studies necessary to the issuance of the Bonds (as opposed to such studies related to completion of the project, but not to the financing).

(n) The proceeds of the Bond (plus estimated investment earnings) will not exceed by more than five percent (5%) the amount necessary for the cost of the Project.

(o) The Issuer covenants to comply with the provision of Section 148 of the Code relating to arbitrage, including but not limited to Section 148(f) relating to the rebate of arbitrage profits, and further covenants that neither the Issuer nor any related person (within the meaning of Section 144(a)(3) of the Code) will intentionally use any portion of the proceeds in contravention of Section 148.

(p) The Issuer covenants that none of the interest on the Bonds, nor interest on any obligations issued as part of the same issue as the Bonds, within the meaning of 144(a)(7) of the Code, will be excluded from gross income under any provision other than Section 144(a)(4).

(q) The Issuer understands that the certifications made in paragraphs (a) through (p) are to be conclusively relied upon by Messrs. Lovett, Vaughan & Cooper in giving their opinion as to the tax-exempt status of the Bonds.

Section 9. Section 6.15 of the Bond Ordinance is amended and reenacted to read as follows:

Section 6.15. Rebate of Excess Arbitrage Earnings.
The following words and terms shall have the following meanings when used in this Section unless the context otherwise requires:

"Bond Year" shall mean the one year period beginning on the day after the expiration of the preceding Bond Year of the Bonds. The first Bond Year of the Bonds begins on the Issue Date and ends one year later.

"Final Rebate Statement" shall mean a rebate statement which the Issuer shall cause to be prepared by an independent certified public accountant within fifty (50) days after Payment of the Tax Exempt Obligation has occurred, which Final Rebate Statement shall set forth the calculation, and amount of, the Rebate Amount as of the date on which Payment of the Tax Exempt Obligation occurred.

"Gross Proceeds" shall mean (a) original proceeds (as defined in Section 1.103-13(b)(2)(i) of the Treasury Regulations), (b) investment proceeds (as defined in Section 1.103-13(b)(2)(ii) of the Treasury Regulations), (c) transferred proceeds (as defined in Section 1.103-14(e)(2)(ii) of the Treasury Regulations) (d) amounts treated as proceeds on the Issue under Section 1.103-13(g) of the Treasury Regulations (related to invested sinking funds), (e) amounts invested in a reasonably required reserve or replacement fund (as defined in Section 1.103-14(d) of the Treasury Regulations), (f) securities or obligations pledged as security for payment of debt service on the Issue by an ultimate obligor (or a related person), the Issuer or by a governmental unit of which the Issuer owns a part, (g) amounts received with respect to acquired purpose obligations (e.g. lease payments and repayments of principal), (h) other amounts used to pay debt service in the Issue and (i) other amounts received as a result of investing the amounts designated in this definition with respect to the Issue. For purposes of this definition, amounts received from the investment of Gross Proceeds of an issue are invested proceeds regardless of whether such amounts are comingled by a person with tax in other revenues.

"Issue" shall mean the Bonds.

"Issue Date" shall mean the date on which the Bonds are first issued and sold to the original Bondholder.

"Issue Price" shall have the same meaning given it in Sections 1273(b) and 1274 of the Code. Thus, in general, such terms shall mean the initial offering price to the public (not including bond houses or brokers or similar persons or organizations acting in the capacity of underwriter or wholesalers) at which price a substantial amount of the obligations were sold, or privately placed, the price paid by the first buyer of such obligations or the acquisition cost of the first buyer.

"Non Purpose Obligation" shall mean any security (as defined in Section 1.103-13(b)(4)(ii) of the Treasury

Regulations) or any obligation (as defined in Section 1.103-13(b)(4)(iii) of the Treasury Regulations) other than an obligation described in Section 103(a) of the Code in which Gross Proceeds of an Issue are invested and which is not acquired to carry out the governmental purpose of the Issue. See Section 1.103-13(b)(4)(iv)(A) of the Treasury Regulations for rules defining the government purpose of the Issue. Thus, for example, acquired obligations (as defined in Section 1.103-13(b)(4)(i) of the Treasury Regulations) purchased with Proceeds of the Issue that are invested in a reasonably required reserve or replacement fund are Non Purpose Obligations. In determining the Non Purpose Obligation in which from Proceeds of the Issue are invested, Non Purpose Obligations not purchased with the Gross Proceeds of the Issue may not be allocated to such proceeds.

"Payment of the Tax Exempt Obligation" shall mean payment in full of the principal or redemption price of, premium, if any, and interest on, the Bonds.

"Rebate Account" shall mean the Rebate Account created pursuant to Section 5.05 of the Bond Ordinance.

"Rebate Amount" shall mean the amount required, from time to time, to be paid to the United States pursuant to Temporary Treasury Regulations Section 1.103-15AT(d)(1) or the amount that would be required to be paid to the United States pursuant to Temporary Treasury Regulations Section 1.103-15AT(d)(1) if such a payment were required to be made to the United States at the particular time, all determined in accordance with Temporary Treasury Regulation §1.103-15AT(d)(2).

"Rebate Date" shall mean each date which is the third Business Day preceding the last date on which a Rebate Payment to the United States is not past due. A Rebate Payment is past due on the expiration of 30 days after each of the 5th, 10th, 15th, 20th, 25th, 30th and 35th anniversaries of the Issue Date and within 60 days of the Payment of the Tax Exempt Obligation.

"Rebate Earnings Account" shall mean the subaccount of the Rebate Account created pursuant to Section 5.05 of the Bond Ordinance.

"Rebate Payment" shall mean the payment of the Rebate Amount required to be paid to the United States in accordance with Temporary Treasury Regulations Section 1.103-15AT as of each Rebate Date.

"Rebate Payment Account" shall mean the subaccount of the Rebate Account created pursuant to Section 710 of the Indenture.

"Rebate Statement" shall mean a statement which the Issuer shall cause to be prepared by an independent certified public accountant or by Bond Counsel not later than the 20th day after each anniversary of the Issue Date which shall set forth the calculation of, and the amount of, the Rebate Amount as of such anniversary.

"Yield" except as otherwise provided herein the term "Yield" shall have the meaning given it by Section 1.103-13(c) of the Treasury Regulations except that the yield of Issue shall be determined on the basis of the issue price.

The Issuer hereby covenants with, and certifies to, and for the benefit of, the holders that so long as the Bonds remain Outstanding, monies on deposit in any fund or account established, maintained or permitted to be established or maintained under the Bond Ordinance whether or not such monies were derived from the proceeds of the sale of the Bonds or from any other source, will not be used or invested in a manner which will cause the Bonds to be classified as an "arbitrage bond" within the meaning of Section 148(a) of the Code. The Issuer obligates itself to comply with the requirements of Section 148 of the Code and any regulations, whether temporary or permanent, promulgated thereunder, including but not limited to Temporary Treasury Regulations Section 1.103-15AT.

The Issuer agrees to cause to be prepared the Rebate Statement as of the end of each Bond Year not later than the twentieth (20th) day following each anniversary of the Issue Date while any Bonds are Outstanding. If at the end of any Bond Year, funds aggregating the Rebate Amount do not exist in the Rebate Account, then the Issuer shall pay to the Depository Bank for deposit into the Rebate Account within twenty-five (25) days after the end of such Bond Year the amount needed to be paid into the Rebate Account to increase the funds therein to an amount equal to such Rebate Amount.

The Issuer agrees to cause to be prepared the Final Rebate Statement not later than the fiftieth (50th) day after Payment of the Tax Exempt Obligation has occurred. If on the date on which Payment of the Tax Exempt Obligation occurs, funds aggregating the Rebate Amount required to be paid to the United States within 50 days following Payment of the Tax Exempt Obligation, in accordance with Section 5.05 of the Bond Ordinance, do not exist in the Rebate Account, then the Issuer

contemporaneously with the delivery of the Final Rebate Statement shall pay to the Depository Bank for deposit in the Rebate Account the amount needed to increase funds on deposit in the Rebate Account to an amount equal to such Rebate Amount. The Issuer shall retain records with regard to each Rebate Statement, including the Final Rebate Statement, for a period of six (6) years following Payment of the Tax Exempt Obligation.

Section 10. The following Section is added to the Bond Ordinance:

Section 5.05. Deposits Into and Payments from Rebate Account and Other Agreements. Certain capitalized terms used in this Section 5.05 shall have the meaning ascribed to such terms in Section 6.15 hereof. Within the Rebate Account there are hereby created and ordered established two separate subaccounts to be designated the "Rebate Payment Account" and "Rebate Earning Account," respectively.

(a) There immediately shall be deposited in the Rebate Payment Account all amounts paid by the Issuer pursuant to Section 6.15 hereof. The Depository Bank shall deposit into the Rebate Earnings Account all interest earned on, and profits received from the investment of, amounts from time to time on deposit in the Rebate Payment Account. Interest accrued on, and profits realized from the Investment of, the Rebate Earnings Account shall be retained therein.

(b) On or before each Rebate Date after receiving the Rebate Statement, the Depository Bank shall pay to the United States, in accordance with the Rebate Statements and the Final Rebate Statement (both as defined herein) provided to the Depository Bank by the Issuer, first from the Rebate Earnings Account and then from the Rebate Payment Account, the Rebate Amount due on such Rebate Date.

(c) On or before the Rebate Date after receiving the Rebate Statement immediately following Payment of the Tax Exempt Obligation, the Depository Bank shall pay to the United States the entire balance of the Rebate Earnings Account. After making the Rebate Payment which immediately follows Payment of the Tax Exempt Obligation and all other Rebate Payments required to be made pursuant to Section 5.05 hereof, the Depository Bank shall pay to the Issuer any amount remaining in the Rebate Payment Account.

(d) The Depository Bank shall provide the Issuer monthly statements setting forth the earnings on the investment of all funds held by the Depository Bank under the terms of

this Indenture and the funds on deposit in the Rebate Account within ten (10) days from the end of each month. The Depository Bank shall retain records of all such statements for a period of six years following Payment of the Tax Exempt Obligation.

Section 11. Section 5.01 of the Bond Ordinance is amended and reenacted to read as follows:

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are established with and shall be held by, the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund;
- (2) Depreciation Fund;
- (3) Project Construction Fund; and
- (4) Reserve Account; and
- (5) Rebate Account.

Section 12. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 29th day of February, 1988.

CITY OF WHITE SULPHUR SPRINGS


Mayor



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

**THE CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)**

CONSENT TO ISSUANCE OF PARITY BONDS

The undersigned duly authorized representative of the United States of America, acting through the United States Department of Agriculture, Rural Development, the registered owner of the Prior Bonds, hereinafter defined and described, hereby (i) consents to the issuance of the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) (the "Series 2009 A Bonds"), in the original aggregate amount not to exceed \$5,000,000, by the City of White Sulphur Springs (the "Issuer"), under the terms of the resolutions authorizing the Series 2009 A Bonds (collectively, the "Resolution"), on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Sewer Revenue Bonds, Series 1987 A (United States Department of Agriculture) (the "Prior Bonds"); (ii) waives any requirements imposed by the Prior Bonds or the resolutions authorizing the Prior Bonds (the "Prior Resolutions"), regarding the issuance of parity bonds which are not met by the Series 2009 A Bonds or the Resolution; and (iii) consents to any amendments made to the Prior Resolutions by the Resolution, and (iv) consents to the reclassifying of the Issuer's Sewer Revenue Bonds, Series 2008 A (BB and T), to be issued in the original aggregate amount of not to exceed \$320,000 as a Parity Bond to be on a parity with respect to liens, pledge and source of security for payment with the Prior Bonds.

WITNESS my signature on this 5th day of February, 2009.

**UNITED STATES OF AMERICA,
UNITED STATES DEPARTMENT OF
AGRICULTURE, RURAL DEVELOPMENT**

Dianne Goff Cuyler

Acting State Director

**CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)**

3.1

GENERAL CERTIFICATE ON:

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

We, the undersigned MAYOR and the undersigned RECORDER of The City of White Sulphur Springs in Greenbrier County, West Virginia (the "Issuer"), and the undersigned CITY ATTORNEY for the Issuer, hereby certify in connection with The City of White Sulphur Springs Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), numbered AR-1, dated the date hereof, in the principal amount of \$3,874,614 (the "Bonds"), as follows:

1. **TERMS:** All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance duly passed by the Issuer on February 23, 2009, effective April 9, 2009, the Supplemental Resolution duly adopted by the Issuer on March 23, 2009 (collectively, the "Ordinance"), and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection ("DEP"), dated April 9, 2009 (the "Loan 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 Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Net Revenues for the Bonds; nor affecting the validity of the Bonds or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the title of the members or officers of the Issuer, the Governing Body, or the Sanitary Board to their respective offices; nor questioning any proceedings of the Issuer taken with respect to the authorization, issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Net Revenues for the Bonds.

3. **GOVERNMENTAL APPROVALS AND BIDDING:** All applicable and necessary approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect, and competitive bids for the acquisition and construction of the Project have been solicited 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 by the Issuer of the Loan Agreement. The Issuer has met all conditions set forth in the Loan Agreement and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

The Bonds are issued on a parity with the Prior Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. The Issuer has obtained (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; (ii) the written consent of the registered owners of the Prior Bonds to the issuance of the Bonds on a parity with the Prior Bonds, and (iii) the written consent of the registered owner of the Series 1987 Bonds to the reclassification of the Series 2008 A Bonds as a Parity Bond to be on a parity with the Series 1987 Bonds and the Series 2009 A Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all the terms and provisions of the Prior Bonds and the Prior Ordinances.

5. **SIGNATURES AND DELIVERY:** The undersigned Mayor and Recorder are the duly elected or appointed, qualified and acting officers of the Issuer as

indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Bonds for the Issuer. The seal impressed upon the Bonds and this Certificate is the duly authorized, proper and only seal of the Issuer. On the date hereof, the undersigned Mayor did officially sign all of the Bonds, consisting upon original issuance of a single Bond, dated the date hereof, by his manual signature; the undersigned Recorder did officially cause the seal of the Issuer to be affixed upon the Bonds and to be attested by his manual signature; and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement.

6. RATES: The Issuer has duly enacted a sewer rate ordinance on January 14, 2008, setting forth the rates and charges for the services of the System. The Issuer has complied with all requirements of the Act and the Public Service Commission of West Virginia (the "PSC") to make the rates valid and effective. The time for appeal of such rate ordinance has expired and there has been no appeal thereof and such rates are in full force and effect.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is the "City of White Sulphur Springs." The Issuer is a municipal corporation of the State of West Virginia in Greenbrier County of said State. The Governing Body of the Issuer is its Council, consisting of 5 Council members and the Mayor. The names and dates of commencement and termination of terms of office for all such officials are listed below:

<u>Office</u>	<u>Name</u>	<u>Date Of Commencement Of Office</u>	<u>Date Of Termination Of Office</u>
Mayor	Debbie Fogus	July 1, 2007	June 30, 2011
Recorder	Jim Perrow	July 1, 2007	June 30, 2011
Council Member	Lynn Swann	July 1, 2007	June 30, 2011
Council Member	Chris Hanna	July 1, 2007	June 30, 2011
Council Member	Peggy Bland	July 1, 2007	June 30, 2011
Council Member	Mike Honaker	July 1, 2007	June 30, 2011
Council Member	Linda Shortridge	July 1, 2007	June 30, 2011

The names of the duly appointed, qualified and acting members of the Sanitary Board of the Issuer are as follows:

Chairman:	Debbie Fogus
Member:	David Dent
Member:	Amelia McClure P.E.

The duly appointed and acting City Attorney for the Issuer is Steven Hunter, Esquire, Lewisburg, West Virginia

8. **MEETINGS:** All actions, ordinances, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction, operation and financing of the Project or the System were authorized or adopted at meetings of the Governing Body duly and regularly or specifically called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes including Chapter 6, Article 9A of the Code of West Virginia, 1931, as amended, and a quorum of duly elected or appointed, qualified and acting members of the Governing Body 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.

9. **INSURANCE:** The Issuer will maintain or, as appropriate, will require all contractors to maintain worker's compensation, public liability and property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Ordinance and the Loan Agreement. All insurance for the System required by the Ordinance and the Loan Agreement is in full force and effect.

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

11. **SPECIMEN BOND:** Attached hereto as Exhibit A is a specimen of the Bond which is identical in all respects with the Bond this day delivered to the Authority and being substantially in the form prescribed in the Ordinance.

12. **BOND PROCEEDS:** On the date hereof, the Issuer received \$675,628 from the Authority and the DEP, being a portion of the principal amount of the Bonds and more than a de minimus amount of the proceeds of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer from time to time as acquisition and construction of the Project progresses.

13. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond Ordinance, an abstract thereof, determined by the Governing Body to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in The West Virginia Daily News, 1 qualified newspaper of general circulation in the Issuer, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Bonds described in the Bond Ordinance, stating that any person interested may appear before the Governing Body at the public hearing held at a public meeting of the Governing Body on March 9, 2009, at 7:00 p.m., prevailing time, in the council chambers of the City Hall in White Sulphur Springs, West Virginia, and present protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the Recorder of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing and remains in full force and effect.

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

15. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Recommended Decision dated December 12, 2008, which became the final PSC Order on January 1, 2009, in Case No. 08-0707-S-CN, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of the PSC Order entered on January 1, 2009, has expired prior to the date hereof. Such Order remains in full force and effect.

16. CONFLICTS OF INTEREST: No member, officer or employee of the Issuer or the Sanitary Board has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor

supplying the Issuer, relating to the Bonds, the Ordinance, and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a “substantial financial interest” shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

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. **VERIFICATION OF SCHEDULE A:** 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 Project, the sources of funds available to pay the costs of the Project and the costs of financing of the Bonds.

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

20. **COUNTERPARTS:** This Certificate may be executed in counterparts and all counterparts shall be deemed to be the Certificate.

WITNESS our signatures and the official corporate seal of The City of White Sulphur Springs on this 9th day of April, 2009.

[SEAL]

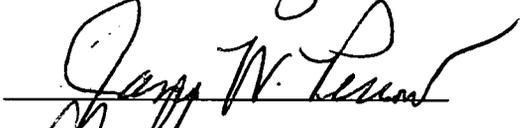
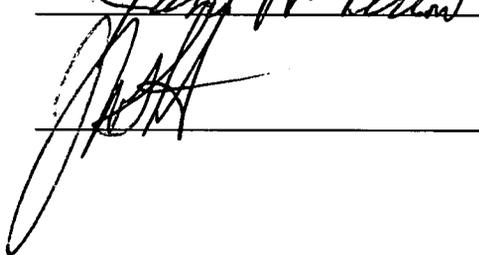
<u>Signature</u>	<u>Official Title</u>
 _____	Mayor
 _____	Recorder
 _____	City Attorney

EXHIBIT A

See Specimen Bond (Tab No. 17)

CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS,
SERIES 2009 A (WEST VIRGINIA SRF PROGRAM)

3.2

CERTIFICATE AS TO USE OF PROCEEDS

On this 9th day of April, 2009, the undersigned Mayor of the City of White Sulphur Springs in Greenbrier County, West Virginia (the "Issuer"), being the officials of the Issuer duly charged with the responsibility for the issuance of \$3,874,614 aggregate principal amount of Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the Issuer, dated April 9, 2009 (the "Bonds" or the "Series 2009 A Bonds"), hereby certify as follows:

1. I am the officer of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meanings as set forth in the Bond Ordinance duly passed by the Issuer on February 23, 2009 (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 April 9, 2009, the date on which the Bonds are to be physically delivered in exchange for a portion of the principal amount of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. The Bonds were sold on April 9, 2009, to the Authority, pursuant to a bond purchase agreement dated April 9, 2009, by and among the Issuer, the Authority, and the DEP, for an aggregate purchase price of \$3,874,614 (100% of par value), at which time, the Issuer received \$675,628 from the Authority and the DEP, being the first advance of the principal 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.

5. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the sewerage portion of the existing public combined waterworks and sewerage sewer system of the Issuer (the "Project"); and (ii) paying costs of issuance of the Bonds and related costs.

6. The Issuer shall, on the date hereof or immediately hereafter, enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Bonds for the acquisition and construction of the Project, constituting a substantial binding commitment. The acquisition and construction of the Project and the allocation of the net sale proceeds of the Bonds to expenditures for costs of the Project shall commence immediately and proceed with due diligence to completion and, with the exception of proceeds deposited in the reserve account for the Bonds, if any, all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of acquisition and construction of the Project on or before April 1, 2010. The acquisition and construction of the Project is expected to be completed by April 1, 2010.

7. The total cost of the Project is estimated to be \$3,889,614. Sources and uses of funds for the Project are as follows:

SOURCES

Proceeds of the Bonds	\$3,874,614
Issuer's Contribution	<u>\$15,000</u>
Total Sources	\$3,889,614

USES

Repayment of Design Bond	\$606,328
Costs of Project	\$3,247,286
Costs of Issuance	<u>\$36,000</u>
Total Uses	\$3,889,614

8. Pursuant to Article V of the Bond Ordinance, the following special funds or accounts have been created (or continued pursuant to the Prior Ordinances):

- (1) Revenue Fund;
- (2) Depreciation Fund;
- (3) Renewal and Replacement Fund;
- (4) Series 2009 A Bonds Construction Trust Fund;
- (5) Series 2009 A Bonds Sinking Fund; and

(6) Series 2009 A Bonds Reserve Account.

9. Pursuant to Article VI of the Bond Ordinance, the proceeds of the Bonds will be deposited as follows:

(1) Bond proceeds in the amount of \$-0- will be deposited in the Series 2009 A Bonds Reserve Account.

(2) The balance of the proceeds of the Bonds will be deposited in the Series 2009 A Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of acquisition and construction of the Project, including costs of issuance of the Bonds and related costs, and for no other purpose.

10. Moneys held in the Series 2009 A 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 and construction of the Project. All investment earnings on moneys in the Series 2009 A Bonds Reserve Account (if equal to the Series 2009 A Bonds Reserve Requirement) will be withdrawn therefrom, not less than once each year, and, during acquisition and construction of the Project, deposited into the Series 2009 A Bonds Construction Trust Fund, and following completion of the Project, will be deposited in the Revenue Fund, and such amounts will be applied as set forth in the Bond Ordinance.

11. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 12 months of the date hereof.

12. The Issuer will take such steps as requested by the Authority to ensure that the Authority's bonds meet the requirements of the Code.

13. With the exception of the amount deposited in the Series 2009 A Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 15 months from the date of issuance thereof.

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 cost of issuance of the Bonds consists only of costs which 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.

19. The Issuer shall use the proceeds of the Bonds solely for the costs of acquisition and construction 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 governmental or public purpose bonds.

22. The Issuer has either (a) funded the Series 2009 A Bonds Reserve Account at the maximum amount of principal and interest, if any, which will mature and become due on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Series 2009 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until the Series 2009 A Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest, if any, which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Series 2009 A Bonds Reserve Account and the Series 2009 A Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on 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 source of funds or will have substantially the same claim to be paid out of substantially the same source of funds as the Bonds.

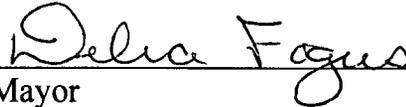
24. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

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 the date first written above.

CITY OF WHITE SULPHUR SPRINGS



Mayor

CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

3.3

CERTIFICATE OF RECORDER AS TO TRUTH
AND ACCURACY OF DOCUMENTS DELIVERED

The undersigned duly elected Recorder of the City of White Sulphur Springs (the "Issuer"), hereby certifies that the copies of the following documents being delivered in connection with the closing of the sale of the City of White Sulphur Springs Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) (the "Bonds") are, as of the date hereof, true, complete and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, that said documents have been duly adopted, enacted or entered by the Council of the Issuer, and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

1. Charter.
2. Oaths of Office of Mayor, Recorder and Council Members.
3. Ordinance Creating Sanitary Board.
4. Oaths of Office of Sanitary Board Members.
5. Public Service Commission Order.
6. Infrastructure Council Approval Letter.
7. Loan Agreement.
8. Rate Ordinance.
9. Minutes of Council Meetings regarding All Readings and Public Hearing of the Rate Ordinance.
10. Affidavit of Publication of the Rate Ordinance and Notice of Public Hearing.

11. Petition of Sanitary Board.
12. Bond Ordinance.
13. Supplemental Resolution.
14. Minutes of Council Meetings regarding All Readings and Public Hearing of the Bond Ordinance and Adoption of the Supplemental Resolution.
15. Affidavit of Publication of the Notice of Public Hearing and Abstract of Bond Ordinance.
16. 1987 A Bond Ordinance and Supplemental Resolution.
17. USDA Consent to Issuance of Parity Bonds.
18. NPDES Permit.
19. Evidence of Insurance.

[The rest of this page is intentionally left blank.]

WITNESS my signature and the official seal of the City of White Sulphur Springs on this 9th day of April, 2009.


Recorder

[SEAL]

CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

3.4

CERTIFICATE OF CONSULTING ENGINEER

I, Paul Ghosh, Registered Professional Engineer, West Virginia License No. 7806, of Ghosh Engineers, Inc., Charleston, West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain additions, betterments and improvements (the "Project") to the existing public sewerage system (the "System") of the City of White Sulphur Springs (the "Issuer"), to be constructed primarily in Greenbrier County, West Virginia, which acquisition and construction are being permanently financed by the above-captioned bonds (the "Bonds") of the Issuer. All capitalized words used herein and not defined herein shall have the same meaning set forth in the Bond Ordinance passed by the Issuer on February 23, 2009, effective March 9, 2009, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection ("DEP"), dated April 9, 2009 (the "Loan Agreement").

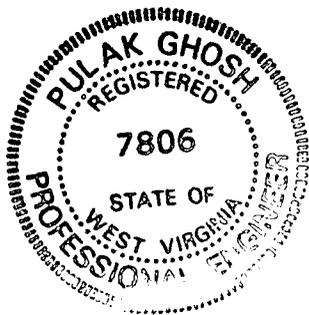
2. The Bonds are being issued for the purposes of (i) paying the costs of acquisition and construction of the Project (including the repayment of the financing for design costs); and (ii) paying certain costs of issuance and related costs.

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 has 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 in reliance upon the opinion of Steve Hunter Associates, l.c., of even date herewith, all successful bidders have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the 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) in reliance upon the certificate of Imre Pentek, CPA, of even date herewith, as of the effective date thereof, the rates and charges for the System as enacted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xi) 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 9th day of April, 2009.

[SEAL]



A handwritten signature in black ink, appearing to read "Paul Ghosh", written over a horizontal line.

Ghosh Engineers, Inc.
Paul Ghosh, P.E.
West Virginia License No. 7806

SCHEDULE A

NAME OF GOVERNMENTAL AGENCY: City of White Sulphur Springs - Greenbrier County
ESTIMATED TOTAL COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING

A. Cost of Project

1	Construction	\$ 2,512,552.00	
	Equipment	\$ 265,000.00	
2	Technical Services	\$ 244,106.00	
3	Legal and Fiscal	\$ 40,000.00	
4	Administrative	\$ -	
5	Site and Other Lands*	\$ 15,000.00	
6	Fac. Plan/Design or Other Loan Repayment (Specify Type: Design Loan)	\$ - \$ 606,328.00	
7	Interim Financing Costs	\$ -	
8	Contingency	\$ 125,628.00	
9	Miscellaneous -	\$ 45,000.00	
10	Total of Lines 1 Through 9		<u>\$ 3,853,614.00</u>

B. Source of Funds

11	Federal Grants	\$ -	
	(Specify Sources)	\$ -	
12	State Grants	\$ -	
	(Specify Sources) - IJDC Grant	\$ -	
13	Other Grants	\$ -	
	(Specify Sources) -	\$ -	
14	Any Other Source	\$ -	
	(Specify) - City Funds for Sites & Lands	\$ 15,000.00	
15	Total of Lines 11 Through 14		<u>\$ 15,000.00</u>
16	Net Proceeds Required from Bond Issue (Line 10 Less Line 15)		<u>\$ 3,838,614.00</u>

C. Cost of Financing

17	Bond Counsel	\$ 36,000.00	
18	Funded Reserve Account	\$ -	
19	Total Cost of Financing (Line 17+ Line 18)		<u>\$ 36,000.00</u>
20	Size of Bond Issue (Line 16 + Line 19)		<u>\$ 3,874,614.00</u>

- * Not allowable for State Revolving Fund Assistance
- ** WDA Loans associated with EPA grants are not allowable

Delia Fogus
 Signature of Applicant

Date: 4-7-09

[Signature]
 Signature of Consulting Engineer

Date: 4-7-09

Imre David Pentek, CPA

P.O. Box 1390 Lewisburg, WV 24901 (304) 647-3949
Fax: (304) 647-3498 E-Mail: imre@writeme.com

October 22, 2008

THE CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

The City of White Sulphur Springs
34 West Main Street
White Sulphur Springs, WV 24986

United States Department of Agriculture
Rural Utilities Service
481 Ragland Road
Beckley, WV 25801

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

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

Jackson Kelly PLLC
1600 Laidley Tower
P.O. Box 553
Charleston, WV 25322

Ladies and Gentlemen:

We have reviewed the sewer service rates of The City of White Sulphur Springs (the "Issuer"), enacted by the Issuer on January 14, 2008, and the projected operating expenses and anticipated customer usage provided by Ghosh Engineers, Inc., the consulting engineer of the Issuer. It is our opinion that such rates are sufficient (i) to provide for all operating expenses of the sewerage system of the Issuer (the "System"), and (ii) to leave a balance each fiscal year equal to at least 115% of the maximum amount required in any succeeding fiscal year for the payment of principal of and interest on the Issuer's Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) (the "Series 2009 A Bonds") and all other obligations secured by or payable from revenues of the System on a parity with the Series 2009 A Bonds, including the Issuer's Sewer Revenue Bonds, Series 1987 and the Sewerage System Refunding Revenue Bonds, Series 2008 A (originally issued junior and prior to the Series 1987 Bonds but reclassified as a parity bond upon receipt of the written consent of the holder of the Series 1987 Bonds) (the "Prior Bonds").



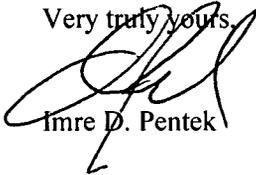
America Counts on CPAs

The City of White Sulphur Springs
Sewer Revenue Bonds, Series 2009A

It is further our opinion that (i) 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 A 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 A Bonds, will not be less than 115% of the maximum debt service in any succeeding year on the Prior Bonds and the Series 2009 A Bonds, and (ii) the Net Revenues for the fiscal year following the year in which the Series 2009 A Bonds are to be issued will be at least 120% of the average annual debt service requirements on the Prior Bonds and the Series 2009 A Bonds. The Issuer is current on all payments to the funds and accounts established under the Prior Resolutions, including RUS reserve accounts.

Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance authorizing the Series 2009 A Bonds.

Very truly yours,



Imre D. Pentek

Gee, Samme

From: Imre Pentek [ipentek@wildblue.net]
Sent: Wednesday, April 01, 2009 08:05 PM
To: Gee, Samme; 'paul ghosh'
Subject: white sulphur bond certification

The Rule 42 I prepared allowed for an SRF loan larger than \$3,874,614, so the bond certification letter I emailed to you should be good. Would you like some signed hard copies and, if so, to whom should I send them?

Thanks!

Imre

Imre D. Pentek
P.O. Box 1390
Lewisburg, WV 24901
304-647-3949
304-647-3498 (Fax)
imre@writeme.com

CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

3.6

RECEIPT FOR BONDS

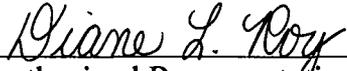
The undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, hereby certifies as follows:

1. On the 9th day of April, 2009, in Charleston, West Virginia, the Authority received the entire original issue of \$3,874,614 in aggregate principal amount of the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the City of White Sulphur Springs (the "Issuer"), dated April 9, 2009, issued in the form of one bond, fully registered to the Authority, and numbered AR-1 (the "Bonds").

2. At the time of such receipt of the Bonds, they had been executed by the Mayor of the Issuer and attested by the Recorder of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been impressed upon the Bonds.

WITNESS my signature on this 9th day of April, 2009.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY



Authorized Representative

PAYMENT REQUISITION FORM

1. LOAN RECIPIENT/VENDOR: City of White Sulphur Springs 2. SRF PROJECT NO. C-544-035
 NAME: City of White Sulphur Springs 3. INVOICE NUMBER: 1
 ADDRESS: 34 West Main
White Sulphur Springs, WV 24986 4. PERIOD COVERED BY THIS REQUEST:
 PHONE: (304) 536-1454 FROM (MO/DAY/YR) TO (MO/DAY/YR)
3/1/2003 3/17/2009 **MAR 23 2009**
 FEIN: 55-6000272 5. PERCENTAGE OF PHYSICAL CONSTRUCTION COMPLETION 0%

CLASSIFICATION	A) APPROVED BUDGET	B) PREVIOUS APPROVED TOTALS	C) THIS REQUEST	D) TOTAL COLUMNS B & C	E) AGENCY USE ONLY
1) CONSTRUCTION	2,512,552	-	-	-	
a. Equipment	265,000	-	-	-	
2) TECHNICAL SVC	-	-	-	-	
Planning-Design	18,000	-	18,000	18,000	18,000
a. Basic	76,000	-	-	-	
b. Engineering	-	-	-	-	
Other	10,000	-	-	-	
c. Inspection	140,106	-	-	-	
3) LEGAL/FISCAL	40,000	-	15,300	15,300	15,300
4) ADMINISTRATIVE	-	-	-	-	
5) LAND	-	-	-	-	
6) PERMITS & FEES	45,000	-	-	-	
7) LOAN REPAYMENT	606,328	-	606,328	606,328	606,328
8) CONTINGENCY	125,628	-	-	-	
9) INT FINANCE COST	-	-	-	-	
10) RESERVE FUND	-	-	-	-	
11) CLOSING COST	36,000	-	36,000	36,000	36,000
12) SUBTOTAL	3,874,614	-	675,628	675,628	675,628
13) LESS PREVIOUSLY PAID					0
14) INVOICE AMOUNT					675,628

15) <u>3-19-09</u> RECIPIENT AUTHORIZED SIGNATURE: DATE: <u>Debra J. Fogus</u> <u>Debra J. Fogus, Mayor</u> TYPED OR PRINTED NAME AND TITLE	16) <u>3-19-09</u> PERSON PREPARING FORM SIGNATURE DATE: <u>Wm E. Cunningham</u> <u>Wm E. Cunningham, Project Manager</u> TYPED OR PRINTED NAME & TITLE
---	---

AGENCY USE ONLY

THIS REQUEST APPROVED BY: WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

<u>Wm D. Ripley</u> PROJECT REVIEWER	<u>3/27/09</u> DATE	<u>R. Bradshaw</u> AUTHORIZED OFFICER	<u>3/30/09</u> DATE
---	------------------------	--	------------------------

ACCOUNTING CLASSIFICATION - DEP USE ONLY

ACCOUNTING NUMBER: 350-1 350-2 <u>083</u>	AMOUNT APPROVED: <u>675,628</u>
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CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

3.7

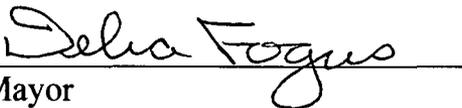
RECEIPT FOR BOND PROCEEDS

The undersigned Mayor of the City of White Sulphur Springs (the “Issuer”), for and on behalf of the Issuer, hereby certifies as follows:

On the 9th day of April, 2009, the Issuer received and hereby acknowledges receipt from the West Virginia Water Development Authority (the “Authority”), as the original purchaser of the \$3,874,614 the City of White Sulphur Springs Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), dated April 9, 2009 (the “Bonds”), of the sum of \$675,628, being a portion of the principal amount of the Bonds. The Issuer understands that the remaining proceeds of the Bonds will be advanced to the Issuer from time to time as construction proceeds to completion.

WITNESS my signature on this 9th day of April, 2009.

THE CITY OF WHITE SULPHUR SPRINGS



Mayor

CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

3.8

REQUEST AND AUTHORIZATION TO
AUTHENTICATE AND DELIVER THE BONDS

April 9, 2009

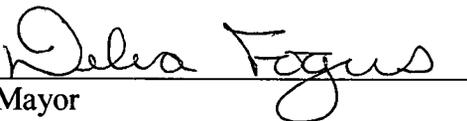
United Bank, Inc., as Registrar
Charleston, West Virginia

Ladies and Gentlemen:

We herewith hand to you, duly executed, the \$3,874,614 Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), in the form of one bond, numbered AR-1, dated April 9, 2009 (the "Bonds"), of the City of White Sulphur Springs (the "Issuer"), authorized to be issued under and pursuant to a Bond Ordinance duly passed by the Issuer on February 23, 2009, effective March 9, 2009, and a Supplemental Resolution duly adopted by the Issuer on March 23, 2009.

You are hereby requested and authorized to register, authenticate and deliver the Bonds on behalf of the Issuer to the West Virginia Water Development Authority.

CITY OF WHITE SULPHUR SPRINGS


Mayor

(SEAL)

Attest:


Recorder

CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

3.9

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 9th day of April, 2009, by and between the CITY OF WHITE SULPHUR SPRINGS, a municipal corporation (the "Issuer"), and UNITED BANK, INC., Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$3,874,614 Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) (the "Bonds"), in the form of one bond, numbered AR-1, in fully registered form, pursuant to a Bond Ordinance duly passed by the Issuer on February 23, 2009, effective March 9, 2009, and a Supplemental Resolution duly adopted March 23, 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 an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Ordinance and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Ordinance and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exclusion of interest, if any, on the Bonds from gross income for federal income tax purposes, 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 for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Ordinance with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Ordinance, the terms of the Ordinance shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Ordinance will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective address:

ISSUER:

The City of White Sulphur Springs
34 West Main Street
White Sulphur Springs, WV 24986
Attention: Mayor

REGISTRAR:

United Bank, Inc.

500 Virginia Street, East
Charleston, WV 25301
Attention: Corporate Trust Department

The Issuer and the Registrar shall notify the other in writing of any change of address.

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Ordinance.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the date first above-written.

THE CITY OF WHITE SULPHUR SPRINGS



Mayor

UNITED BANK, INC.



Authorized Officer

EXHIBIT A

**See Bond Ordinance (Tab No. 13)
See Supplemental Resolution (Tab No. 14)**

CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

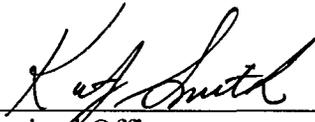
3.10

CERTIFICATE OF REGISTRATION OF BONDS

UNITED BANK, INC., Charleston, West Virginia, as Registrar (the "Registrar"), hereby certifies that on the date hereof, the single, fully registered Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the City of White Sulphur Springs (the "Issuer"), dated April 9, 2009, in the principal amount of \$3,874,614, and numbered AR-1, was registered as to principal in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature on this 9th day of April, 2009.

UNITED BANK, INC., as Registrar



Authorized Officer

CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

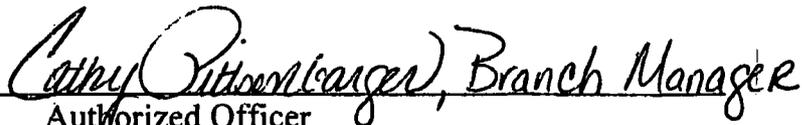
3.11

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

FIRST NATIONAL BANK, White Sulphur Springs, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of the City of White Sulphur Springs (the "Issuer"), passed by the Issuer on February 23, 2009, effective March 9, 2009, and a Supplemental Resolution adopted by the Issuer on March 23, 2009 (collectively, the "Ordinance"), authorizing the issuance of The City of White Sulphur Springs Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), in the aggregate principal amount of \$3,874,614, dated April 9, 2009, and agrees to serve as Depository Bank, all as set forth in the Ordinance.

Witness my signature on this 9th day of April, 2009.

FIRST NATIONAL BANK


Authorized Officer

WEST VIRGINIA MUNICIPAL BOND COMMISSION

Suite 500

8 Capitol Street, Charleston, WV 25301

(304) 558-3971

3.12

NEW ISSUE REPORT FORM

Date of Report: April 9, 2009

ISSUE: City of White Sulphur Springs Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program)

ADDRESS: 34 West Main Street, White Sulphur Springs, WV 24986 COUNTY: Greenbrier

PURPOSE OF ISSUE: New Money Refunding Refunds issue(s) dated: _____

ISSUE DATE: April 9, 2009 CLOSING DATE: April 9, 2009

ISSUE AMOUNT: \$3,874,614 RATE: 0%

1st DEBT SERVICE DUE: September 1, 2010 1st PRINCIPAL DUE: September 1, 2010

1st DEBT SERVICE AMOUNT: \$32,289 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC UNDERWRITERS COUNSEL: Kauffelt & Kauffelt
Contact Person: Samme L. Gee, Esquire Contact Person: Mark Kauffelt, Esquire
Phone: (304) 340-1318 Phone: (304) 345-1272

CLOSING BANK: First National Bank ESCROW TRUSTEE: _____
Contact Person: Cathy Pittsenbarger Contact Person: _____
Phone: (304) 536-2224, ext. 412 Phone: _____

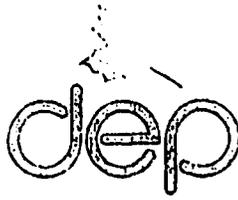
KNOWLEDGEABLE ISSUER CONTACT: OTHER: WVDEP
Contact Person: Debbie Fogus Contact Person: Rosalie Brodersen
Position: Mayor Function: Program Manager
Phone: (304) 536-1454 Phone: (304) 558-0637
E-Mail: WSS34@suddenlinkmail.com

DEPOSITS TO MBC AT CLOSE: _____ Accrued Interest: \$ _____
Capitalized Interest: \$ _____
By Wire _____ Reserve Account: \$ _____
 Check _____ Other: 1 \$ 294,650

REFUNDS & TRANSFERS BY MBC AT CLOSE:
By _____ Wire _____ To Escrow Trustee: \$ _____
_____ Check _____ To Issuer: \$ _____
_____ IGT _____ To Cons.Invest.Fund \$ _____
_____ To Other: _____ \$ _____

NOTES: Payoff 2008 A Bond.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: _____
Transfers Required: _____



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

June 13, 2008

Mark A. Whittington, Plant Manager
City of White Sulphur Springs
34 West Main Street
White Sulphur Springs, WV 24986

CERTIFIED RETURN RECEIPT REQUESTED

Re: WV/NPDES Permit No. WV0084000
Modification No. 6

Dear Mr. Whittington:

This correspondence shall serve as Modification No. 6 of your existing WV/NPDES Water Pollution Control Permit No. WV0084000, issued the 5th day of May 2004.

After review and consideration of the information submitted on, and with, Permit Modification Application No. WV0084000-F, dated the 18th day of January 2008, the plans and specifications, additional information, dated the 24th day of March 2008, and other relevant information, the subject Permit is hereby modified to incorporate, and effectuate, the following data and changes, respectively.

1. To acquire, construct, install, operate and maintain improvements to and rehabilitation of an existing wastewater collection system to be comprised of approximately 1,300 linear feet of six (6) inch diameter gravity sewer line, 5,300 linear feet of eight (8) inch diameter gravity sewer line, 3,700 linear feet of 12 inch diameter gravity sewer line, 3,000 linear feet of 15 inch diameter gravity sewer, 42 new manholes, replacement of 20 existing manholes, new inverts for 65 existing manholes, 200 new manhole steps for existing manholes, replacement of the frame and cover on 100 existing manholes, replacement of the Pleasant Valley Pump Station, abandonment and deletion of the Howard Creek Pump Station, and all requisite appurtenances.
2. Portions of the existing 1.6 million gallons per day modified extended aeration wastewater treatment plant shall become an integral part of the new wastewater treatment plant, or be abandoned.

Promoting a healthy environment.

Mark A. Whittington, Plant Manager
City of White Sulphur Springs
Page 2
June 13, 2008

3. To acquire, construct, install, operate and maintain a 2.5 million gallons per day vertical loop reactor wastewater treatment plant to be comprised of a plant pump station, a mechanical bar screen, a manual bar screen, grit removal facilities, three (3) reactor chambers with a volume of 565,500 gallons each, two (2) clarifiers with a volume of 594,200 gallons each and a surface area of 5,674 square feet each, chlorination facilities, conversion of portions the two (2) existing aeration chambers to two (2) chlorine contact chambers with a volume of 131,800 gallons each, dechlorination facilities, conversion of portions the two (2) existing aeration chambers to two (2) post aeration basins with a volume of 33,700 gallons each, a return/waste activated sludge pump station, a nonpotable wash water system, a return activated sludge fine screening and inert removal system, conversion of portions of the two (2) existing aeration basins to two (2) sludge interchange bioreactors with volumes of 172,800 gallons and 102,400 gallons, conversion of the two (2) existing aerobic digesters to two (2) aerated sludge holding tanks with a volume of 67,100 gallons each, incorporation of the rebuilt sludge dewatering centrifuge, a new generator in a new building, a new building for the chlorination and dechlorination equipment, renovation of the existing administration building, conversion of the one (1) existing sludge drying bed area to a new sludge building, and all requisite appurtenances.
4. These facilities are to serve a population equivalent of approximately 16,000 persons in the City of White Sulphur Springs, the Greenbrier Hotel Complex, and environs, and discharge treated wastewater through Outlet No. 004 to Howard Creek, approximately 3.9 miles from its mouth, of the Greenbrier River of the New River of the Kanawha River, located at a latitude of 37° 46' 19" north and a longitude of 80° 21' 10" west.
5. To allow the discharge of untreated storm water runoff through Outlet No. 003 to Howard Creek, approximately 3.9 miles from its mouth, of the Greenbrier River of the New River of the Kanawha River, located at a latitude of 37° 46' 19" north and a longitude of 80° 21' 10" west.
6. The wastewater treatment plant and wastewater collection system improvements project shall be constructed in accordance with the plans and specifications, approved the 14th day of September 2007, for the wastewater treatment plant, the 28th day of March 2008, for the wastewater collection system, and any approved addenda, thereto, prepared by Ghosh Engineers, Inc.; 4710 Chimney Drive; Charleston, WV 25302, and entitled "City of White Sulphur Springs, Greenbrier County, West Virginia, Wastewater System Improvements, Contract I - Wastewater Treatment Plant Improvements; Contract II – Wastewater Collection System; SRF Project No. C-544035."
7. This permit modification shall, further, for the wastewater treatment plant portion, be subject to the terms and conditions of the Bureau for Public Health, Office of Environmental Health Services, Permit No. 17,695, dated the 14th day of September 2007.

8. Upon initiation of operation of the new wastewater treatment plant, Section C.8 on page 15 of 27 shall be replaced with the following.

The average daily design flow of the Publicly Owned Treatment Works has been established at 2.5 million gallons per day. When the average monthly effluent flow reported on Discharge Monitoring Reports reaches, or exceeds, 90 percent of the average design flow, 2.25 million gallons per day, during three (3) consecutive monthly periods, the permittee shall submit a Plan of Action to the Director. The Plan of Action shall present, at a minimum, an analysis of current hydraulic and organic loadings on the plant, an analysis of the future projected loadings, and a Schedule of Tasks to accomplish procedures necessary to maintain required treatment levels.

9. Upon initiation of operation of the new wastewater treatment plant, Section C.9 on page 15 of 27 shall be replaced with the following.

Any future collection system extensions projected to cause an increase in the wastewater flow, equal to, or greater than, 125,000 gallons per day (five (5) percent of average design flow) shall require the permittee to contact the Director to secure approval of the extension. After consideration of the complexity of the project, and the available treatment capacity of the facility, the Director may require the permittee to seek approval through Modification of the Permit.

10. Upon initiation of operation of the new wastewater treatment plant, the table presented in Section C.12.a. on page 17 of 27 shall be replaced with the following.

Parameter	EPA Method No.	Method Detection Level (ug/l)
Copper, Total Recoverable	200.8	0.5
Lead, Total Recoverable	200.8	0.6
Zinc, Total Recoverable	200.8	1.8
Chromium, Hexavalent	218.6	0.6
Arsenic, Total	200.8	1.4
Nickel, Total Recoverable	200.8	0.5
Cadmium, Total Recoverable	200.8	0.5
Silver, Total Recoverable	200.8	0.1
Mercury, Total*	245.7	0.0018
Mercury, Total*	1631	0.0002
Cyanide, Free	Refer to Section C.12.b	5

*The permittee may use either Method 245.7 or Method 1631 for the analysis of mercury.

11. Upon initiation of operation of the new wastewater treatment plant, the following shall be incorporated into Section C of the permit and applicable to storm water.

C.17. Monitoring for the storm water Outlet No. 003 listed in the permit shall be in accordance with the following requirements.

- a) Sampling: The collection of the samples for the reported analyses shall be in accordance with Appendix A, Part III of this permit. Any specific requirements contained in the applicable analytical methods must be followed for sample containers, sample preservation, holding times, the collection of duplicate samples, etc.
- b) A grab sample shall be collected during the first 30 minutes, or as soon thereafter as practicable, of the discharge and analyzed.
- c) Grab samples are defined as an individual sample of at least 100 milliliters collected during the first 30 minutes, or as soon thereafter as practicable, of the discharge.
- d) Sample Type: Samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where once per six (6) month sampling is required, the samples for each six month period shall be collected at least three (3) months apart, if possible. The grab sample shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impractical, a sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impractical.

C.18. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with the wastewater treatment facility covered by this permit, the permit may be promptly modified and/or reissued to include effluent limitations and/or other requirements to control such storm water discharges.

C.19. Within six (6) months of the initiation of operation of the new wastewater treatment plant, the permittee shall develop and implement, the storm water pollution prevention plan (SWPPP) for the wastewater treatment facility site. The SWPPP shall be prepared in accordance with good engineering practices. The SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with the industrial activity. In addition, the plan shall describe and ensure the implementation of practices which are to be used to

11. (Continued)

C.19. (Continued)

reduce the pollutants in storm water discharges associated with the industrial activity at the facility and to assure compliance with the terms and conditions of this permit. A copy of the plan shall be retained at the site for review upon request.

C.20. Monitoring benchmark concentrations for Outlet No. 003 storm water pollutants are as follows:

Pollutant	Monitoring Cut-Off Concentration	Sampling Frequency	Sample Type
Biochemical Oxygen Demand	30.0 mg/l	1/6 months	Grab
Chemical Oxygen Demand	120.0 mg/l	1/6 months	Grab
Total Suspended Solids	100.0 mg/l	1/6 months	Grab
Total Nitrogen	5.0 mg/l	1/6 months	Grab
Total Phosphorus	2.0 mg/l	1/6 months	Grab
Fecal Coliform	400 counts/100 ml	1/6 months	Grab
pH	6.0 – 9.0 SU	1/6 months	Grab
Oil & Grease	15.0 mg/l	1/6 months	Grab

C.21. When the average concentration of a pollutant calculated from all monitoring data, minimum of four (4) consecutive samples, is less than the corresponding bench mark value for the pollutant, additional monitoring for the pollutant is not required (all pH values of the samples must be within the range 6.0 to 9.0 S.U.). The permittee shall submit, twice per year, to the Director, in lieu of the monitoring data, a certification, form will be provided upon request, that there has not been a significant change in the industrial activity or the pollution prevention measures in the area of the facility that drains to the outlet for which sampling is to be waived. If the average concentration of a pollutant exceeds the corresponding benchmark concentration or pH values of all samples are not within the range of 6.0 to 9.0 S.U., monitoring shall continue and storm water pollution prevention measures shall be revised and the revised plan implemented.

12. Upon initiation of operation of the new wastewater treatment plant, the following shall be incorporated into Section C of the permit and applicable to effluent testing.
 - C.22. Available sampling methods for total residual chlorine (TRC), discharged through Outlet No. 004, are currently not sensitive enough to confirm compliance with the permit limitations imposed for the new treatment plant. Total residual chlorine (TRC) samples shall be taken, preserved and analyzed in accordance with the latest edition of 40 CFR Part 136. Because the permittee does not operate a certified wastewater laboratory at the plant site but still must comply with the instantaneous sample-type requirements, the permittee shall use an EPA Approved Method with at least a method detection level (MDL) of 100 ug/l. Any TRC sampling result reported as less than the MDL stated above shall be assumed to confirm compliance for purposes of permit compliance. Should a more sensitive EPA approved method become available for field analysis of TRC, the permittee shall perform TRC self-monitoring in accordance with the new method. If the new method is not sensitive enough to determine compliance with specified TRC limits, analytical results reported as "not detected" at the MDL of the new method will be deemed compliant for purposes of permit compliance.
 - C.23. The permittee shall annually perform chronic toxicity tests as described below, on the effluent from Outlet No. 004:
 - a. Such testing will determine if an appropriate dilute effluent sample affects the survival or reproduction of the test species. Eight (8) hour flow weighted composite samples of the effluent, as prescribed in Section A, shall be collected for testing. An appropriate statistical test shall be used to determine whether differences in control and effluent data are significant.
 - i) The permittee shall conduct a three (3) brood (6-8 days) Ceriodaphnia Dubia survival and reproduction toxicity test on the final effluent diluted by appropriate control water. Toxicity will be demonstrated if there is a statistically significant difference at the 95 percent confident level in survival of reproduction between Ceriodaphnia Dubia exposed to an appropriate control water and the final effluent. All test solutions shall be renewed using an approved renewal schedule. If, in any control, more than 20% of the test organisms die, or less than 60% of surviving females in controls produced their third brood, that test shall be repeated.

12. (Continued)

C.23.a. (Continued)

- ii) The permittee shall conduct a seven (7) day *Pimephales Promelas* fathead minnow larval survival and growth toxicity test on the final effluent diluted by appropriate control water. Toxicity will be demonstrated if there is a statistically significant difference at the 95 percent confidence level in survival or growth between fathead minnows exposed to an appropriate control water and the final effluent. All test solutions shall be renewed using an approved renewal schedule. If, in any control, more than 20% of the test organisms die, or average dry weight of surviving controls was less than 0.25 mg/l that test shall be repeated.
- b. Results shall be reported in terms of chronic toxic units (TUc) and shall be submitted with the corresponding monthly Discharge Monitoring Report (DMR).

TUc= 100/NOEC or NOEL
Where NOEC (or NOEL) is No Observed Effect Concentration (or Level), which is expressed as percent (volume) effluent in dilution water.
For Example, if NOEC is 10%, TUc= 100/10=10

When the effluent demonstrates no toxicity at 100% effluent (no observed effect), the permittee may report zero TUc.
- c. The monitoring required, herein, shall be conducted in accordance with the sample collection, preservation, and analytical procedures specified in 40 CFR 136.
- d. In addition to the monitoring data reporting requirements of 40 CFR 136, the exact age of the test organisms at the initiation of the test shall be reported. Values of less than or equal to 24 hours are acceptable for *Pimephales Promelas*, fathead minnow. The range of the *Ceriodaphnia Dubia* used must be reported as a range in hours. All *Ceriodaphnia Dubia* used in the test must be less than 24 hours of age at test commencement. The age difference between the youngest and oldest *Ceriodaphnia Dubia* used in the test must not exceed eight (8) hours.
- e. The chronic toxicity testing shall be performed on an annual (1/year) basis. The first chronic toxicity testing shall be carried out within six (6) months from the effective date of the permit for Outlet No. 001. There shall be a minimum of six (6) months between sampling events.

12. (Continued)

C.23. (Continued)

- f. If chronic effluent toxicity testing shows noncompliance with the limitations of 2.8 TUc, the permittee shall immediately resample and test the effluent. This shall be performed within 30 days of the initial demonstration of noncompliance with the whole effluent toxicity discharge limitations prescribed herein. Copies of the retesting results shall be provided to the Director immediately upon completion of the test.
- g. If the second test shows compliance, chronic effluent toxicity testing shall continue in accordance with the requirements, as prescribed herein. However, if the second test shows noncompliance, the Director shall impose further requirements, as may be necessary, in order to obtain compliance with the chronic effluent toxicity discharge limitations.
- h. The Director may impose further requirements should the chronic effluent toxicity testing results demonstrate noncompliance.

C.24 The permittee shall be required to sample the discharge from Outlet No. 004 for the pollutants listed in Appendix J, Table 2 of 40 CFR 122 as part of its next reissuance permit application following the procedures listed below. This data shall be submitted along with the next reissuance permit application.

- a. Grab samples shall be collected for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and volatile organics. Twenty-four (24) hour composite samples shall be collected for all other pollutants found in Appendix J, Table 2 of 40 CFR 122.
- b. A minimum of three (3) test results for each pollutant shall be obtained a minimum of four (4) months apart. Each sampling result shall be collected in a manner to be representative of seasonal variations (such as April, August, and December).
- c. All data collected over the term of the previous permit for a specific pollutant shall be summarized and submitted to the agency by the permittee.

Mark A. Whittington, Plant Manager
City of White Sulphur Springs
Page 9
June 13, 2008

12. (Continued)

C.24. (Continued)

- d. The sample collection, preservation, and analysis shall be conducted in accordance with the procedures of 40 CFR Part 136. The permittee shall assure that the test procedure being utilized has an appropriate method detection level (MDL) for the parameters. Analyses shall be conducted using the most sensitive methods and detection levels commercially available, and economically feasible.

13. Upon initiation of operation of the new wastewater treatment plant, the following shall be incorporated into Section C of the permit and applicable to receiving stream testing.

C.25. A Total Hardness sample is to be collected from the receiving stream at a point immediately upstream of the effluent discharge.

14. Resultant to complications with algae in the Greenbrier River, the monitoring requirements measurements frequency for total nitrogen and total phosphorus for Outlet No. 001 shall be changed from once per quarter to once per month.

Enclosed are revised page 2 of 27, revised page 4 of 27, revised page 7 of 27, incorporated page 8a of 27, incorporated page 8b of 7, incorporated page 8c of 27, incorporated page 8d of 27, incorporated page 8e of 27, incorporated page 8f of 27, and incorporated page 8g of 27 along with Discharge Monitoring Reports, as applicable. These documents shall supersede, as designated, or be incorporated with, the ones currently in your possession, and should be appropriately integrated into your existing WV/NPDES Water Pollution Control Permit.

All other terms and conditions of the subject WV/NPDES Water Pollution Control Permit shall remain unchanged and in effect.

Sincerely,

Lisa A. McClung
Director

LAM:jdm

Enclosures

ACORD. CERTIFICATE OF LIABILITY INSURANCE		OP ID: AH WHITE-1	DATE (MM/DD/YYYY) 04/06/09
PRODUCER Commercial Insurance Services 340 MacCorkle Ave. Ste #200 Charleston WV 25314 Phone: 304-345-8000 Fax: 304-345-8014		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.	
INSURED City of White Sulphur Springs Linda Barker 34 West Main Street White Sulphur Springs WV 24986		INSURERS AFFORDING COVERAGE INSURER A: Argonaut Great Central Ins. Co INSURER B: INSURER C: INSURER D: INSURER E:	NAIC # _____

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.

INBR	KDD1	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	PE-4613910-02	07/15/08	07/15/09	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/POP AGG \$ 6,000,000 Emp Ben. 2,000,000
A		AUTOMOBILE LIABILITY <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-4613910-02	07/15/08	07/15/09	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: P&A ACC \$ AGG \$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 0	PE-4613910-02	07/15/08	07/15/09	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ \$ \$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROMISE TO/PARTICIPATION/CONTING OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	PE-4613910-02	07/15/08	07/15/09	WC STATUTORY LIMITS OTHER 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 additional insured as respects sewer project at City of White Sulphur Springs.

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 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
--	---

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

CLOSING MEMORANDUM

3.15

To: Mayor Debbie Fogus
Rosalie Brodersen
Diane Roy
Sara Boardman

From: Samme Gee

Date: April 9, 2009

Re: City of White Sulphur Springs Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program)

1. **DISBURSEMENTS TO CITY**

Payor: West Virginia Department of Environmental Protection
Source: Series 2009 A Bonds Proceeds
Amount: \$380,978
Date: April 9, 2009
Form: Wire
Payee: City of White Sulphur Springs
Bank: First National Bank
901 East Main Street, White Sulphur Springs, WV 24986
ABA: 0610-0641-5
Account #: 727822
Contact: Cathy Pittsenbarger, 304.536-2224

2. **DISBURSEMENTS TO MUNICIPAL BOND COMMISSION**

Payor: West Virginia Department of Environmental Protection
Source: Series 2009 A Bonds Proceeds
Amount: \$294,650
Date: April 9, 2009
Form: Wire
Payee: City of White Sulphur Springs
Bank: BB&T for benefit of Municipal Bond Commission
ABA: 051503394
Account #: 5270517317
Contact: Sara Boardman, 304.558.3971
Purpose: Pay for the Series 2008 A Bonds

CITY OF WHITE SULPHUR SPRINGS
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

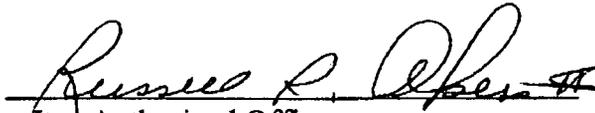
3.16

RECEIPT AND RELEASE

Branch Banking and Trust Company, Charlotte, North Carolina, as holder of the Sewerage System Refunding Revenue Bonds, Series 2008 A (BB and T) (the "Prior Bonds"), of the City of White Sulphur Springs (the "City"), dated November 14, 2008, in the original aggregate principal amount of \$300,000, hereby certifies that it has received from the City a sum which is sufficient to pay the entire principal amount of and interest accrued on the Prior Bonds, to and including April 10, 2009, and discharge the liens, pledges and encumbrances securing the Prior Bonds.

Dated this 10th day of April, 2009.

BRANCH BANKING AND TRUST COMPANY

By: 
Its: Authorized Officer

**CITY OF WHITE SULPHUR SPRINGS
SEWERAGE SYSTEM REFUNDING REVENUE BONDS,
SERIES 2008 A (BB and T)**

**CONSENT OF BOND HOLDER TO
PAYMENT OF BONDS**

The undersigned duly authorized representative of Branch Banking and Trust Company, the registered owner of the entire outstanding aggregate principal amount of Sewerage System Refunding Revenue Bonds, Series 2008 A (the "Bonds") issued by the City of White Sulphur Springs (the "Issuer"), hereby consents to the prepayment of the Bonds on April 9, 2009.

Dated this 3rd day of April, 2009.

BRANCH BANKING AND TRUST COMPANY



April 9, 2009

City of White Sulphur Springs
34 West Main Street
White Sulphur Springs, WV 24986

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

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

Re: City of White Sulphur Springs
Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program)

Ladies and Gentlemen:

We have served as bond counsel to the City of White Sulphur Springs (“the Issuer”), a municipal corporation, in connection with the issuance of its Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), dated the date hereof (the “Bonds”).

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a loan agreement for the Bonds dated April 9, 2009, including all schedules and exhibits attached thereto (the “Loan 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 Loan Agreement. The Bonds are issued in the principal amount of \$3,874,614, in the form of one bond, registered as to principal and interest to the Authority, with interest at the rate of 0% per annum, and with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing September 1, 2010, all as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds are subject to the SRF Administrative Fee equal to 1% of the principal amount of the Bonds as set forth in the Schedule Y attached to the Loan Agreement.

{C1411013.1}

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 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), for the purposes of (i) paying the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (including the repayment of the design bonds) (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 passed by the Issuer on February 23, 2009, effective March 9, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on March 23, 2009 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued, and the Loan Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance and in the Loan Agreement when used herein.

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

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to enact the Ordinance and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

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

3. The Loan Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or 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 adopted 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 Loan Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and 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 Issuer's Sewer Revenue Bonds, Series 1987, and Sewer Revenue Bonds, Series 2008 A (BBandT), all in accordance with the terms of the Bonds and the Ordinance.

6. Under the Act, the Bonds and any interest thereon are exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

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

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

Very truly yours,





209 North Court Street
Lewisburg, WV 24901
304-645-4622

April 9, 2009 Fax 304-645-4064

City of White Sulphur Springs
34 West Main Street
White Sulphur Springs, WV 24986

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

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

Jackson Kelly PLLC
P. O. Box 553
Charleston, WV 25322

Re: City of White Sulphur Springs
Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program)

Ladies and Gentlemen:

I am City Attorney for the City of White Sulphur Springs in Greenbrier County, West Virginia (the "Issuer"). As such City Attorney, I have examined copies of the approving opinion of Jackson Kelly PLLC, as bond counsel, relating to the above-captioned bonds of the Issuer (the "Bonds"), a loan agreement for the Bonds, dated April 9, 2009, including all schedules and exhibits attached thereto (the "Loan 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 passed by the Issuer on February 23, 2009, effective March 9, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on March 23, 2009 (collectively, the "Ordinance"), a Petition of the Sanitary Board duly adopted on February 3, 2009, and other documents relating to the Bonds. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Loan Agreement and the Ordinance when used herein.

I am of the opinion that:

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System and to enact the Ordinance, all under the Act and other applicable provisions of law. The Sanitary Board has been duly created by the Issuer and is presently existing as a sanitary board under the Act.

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

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

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

5. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Bonds, the Loan 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 or default under any ordinance, resolution, order, agreement, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.

6. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges, including, without limitation, all requisite orders, consents, certificates and approvals from the DEP, the West Virginia Infrastructure and Jobs Development Council and the Public Service Commission of West Virginia (the "PSC"), and the Issuer has taken any other action required for the imposition of

City of White Sulphur Springs
West Virginia Department of Environmental Protection
West Virginia Water Development Authority
Jackson Kelly PLLC
April 9, 2009
Page 3

such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges.

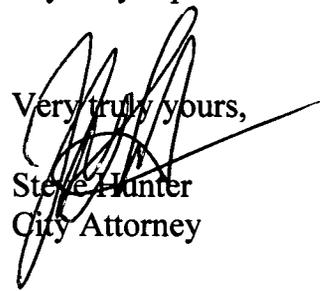
7. The Issuer has received the Recommended Decision dated December 12, 2008, which became the final PSC Order on January 1, 2009, in Case No. 08-0707-S-CN, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of the PSC Order entered on January 1, 2009, has expired prior to the date hereof. Such Order remains in full force and effect.

8. 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 Loan 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 or the pledge of the Net Revenues for the payment of the Bonds.

9. All successful bidders have made the required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon my review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, I am of the opinion that such surety bonds and policies: (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interest of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Ordinance and the Loan 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.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,


Steve Hunter
City Attorney



209 North Court Street
Lewisburg, WV 24901
304-645-4622

Fax 304-645-4064

April 9, 2009

City of White Sulphur Springs
34 West Main Street
White Sulphur Springs, WV 24986

WV Department of Environmental Protection
601 - 57th Street
Charleston, WV 25304

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

Jackson Kelly PLLC
P.O. Box 553
Charleston, WV 25322

Re: Final Title Opinion for the City of White Sulphur Springs

Ladies and Gentlemen:

I am City Attorney for the City of White Sulphur Springs (the "Issuer") in connection with a proposed project to construct certain extensions, additions, betterments and improvements to the existing sewerage system of the Issuer (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. I am of the opinion that 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.

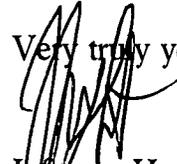
2. The Issuer has obtained all necessary permits and approvals for the construction of the Project.

3. I have investigated and ascertained the location of, and I am familiar with the legal description of, the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Ghosh Engineers, Inc., the consulting engineer for the Project.

4. I have examined the records on file in the Office of the Clerk of the County Commission of Greenbrier County, West Virginia, the county in which the Project is to be located, and, in my opinion, the Issuer has acquired legal title or such other estate 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 deeds, easements and rights of way which have been acquired to date by the Issuer have been duly recorded in the Office of the Clerk of the County Commission of Greenbrier County to protect the legal title to and interest of the Issuer.

Very truly yours,



J. Steven Hunter
City Attorney