

**CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2015 A  
SEWERAGE SYSTEM BOND ANTICIPATION  
NOTES, SERIES 2015  
2013S-1427**

**Closing Date: December 3, 2015**



CITY OF NITRO  
WEST VIRGINIA

SEWERAGE SYSTEM  
BOND AND NOTE ORDINANCE

CITY OF NITRO  
SEWERAGE SYSTEM  
BOND AND NOTE ORDINANCE

TABLE OF CONTENTS

PAGE

ARTICLE I  
STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Ordinance .....	1
Section 1.02. Findings.....	1
Section 1.03. Ordinance Constitutes Contract .....	4
Section 1.04. Definitions.....	5

ARTICLE II  
AUTHORIZATION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND  
IMPROVEMENTS TO SYSTEM; AUTHORIZATION OF THE NOTES

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements.....	10
Section 2.02. Authorization of the Notes.....	10
Section 2.03. Security for the Notes .....	10
Section 2.04. Designation of Notes as “Qualified Tax-Exempt Obligations.” .....	10

ARTICLE III  
AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Bonds.....	11
Section 3.02. Execution of Bonds.....	11
Section 3.03. Authentication and Registration .....	12
Section 3.04. Negotiability, Transfer and Registration.....	12
Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost.....	12
Section 3.06. Bonds not to be Indebtedness of the City .....	13
Section 3.07. Bonds Secured by Pledge of Net Revenues .....	13
Section 3.08. Form of Bonds .....	13
Section 3.09. Sale of Bonds .....	13
Section 3.10. Bonds are Issued as Parity Bonds .....	13
Section 3.11. Delivery of Bonds .....	14

ARTICLE IV  
APPLICATION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01.	Application of Bond Proceeds .....	15
Section 4.02.	Disbursements From the Bond Construction Trust Fund .....	15
Section 4.03.	Funds and Accounts; Flow of Funds .....	16
Section 4.04.	Investments .....	17

ARTICLE V  
DEFAULT AND REMEDIES

Section 5.01.	Events of Default .....	18
Section 5.02.	Remedies.....	18
Section 5.03.	Appointment of Receiver.....	18

ARTICLE VI  
ADDITIONAL COVENANTS OF THE CITY

Section 6.01.	Completion of Project; Permits and Orders .....	20
Section 6.02.	Insurance and Construction Bonds .....	20
Section 6.03.	Issuance of Other Obligations Payable Out of Revenues .....	21
Section 6.04.	Engineering Services and Operating Personnel.....	21
Section 6.05.	Compliance With Law .....	21
Section 6.06.	Books; Records and Audit .....	21
Section 6.07.	Operating Budget .....	23
Section 6.08.	Tax Covenants .....	23
Section 6.09.	Rebate Covenant .....	23
Section 6.10.	Arbitrage .....	24
Section 6.11.	Tax Certificate and Rebate.....	24
Section 6.12.	Securities Laws Compliance.....	25
Section 6.13.	Defeasance of Bonds.....	25
Section 6.14.	Rates and Charges .....	26
Section 6.15.	Contracts .....	27

ARTICLE VII  
REGISTRAR

Section 7.01.	Appointment of Registrar .....	28
Section 7.02.	Responsibilities of Registrar .....	28
Section 7.03.	Evidence on Which Registrar May Act .....	28
Section 7.04.	Compensation and Expenses.....	28
Section 7.05.	Certain Permitted Acts.....	28
Section 7.06.	Resignation of Registrar .....	28
Section 7.07.	Removal .....	29
Section 7.08.	Appointment of Successor .....	29
Section 7.09.	Transfer of Rights and Property to Successor.....	29
Section 7.10.	Merger or Consolidation .....	29

Section 7.11. Adoption of Authentication .....30

ARTICLE VIII  
MISCELLANEOUS

Section 8.01. Modification or Amendment.....31  
Section 8.02. Severability of Invalid Provisions.....31  
Section 8.03. Repeal of Conflicting Ordinances.....31  
Section 8.04. Covenant of Due Procedure .....31  
Section 8.05. Statutory Notice and Public Hearing .....31  
Section 8.06. Effective Date .....32

CERTIFICATE OF TRUTH AND ACCURACY.....33

EXHIBIT A DESCRIPTION OF PROJECT ..... A-1  
EXHIBIT B FORM OF BOND AND FORM OF NOTE .....B-1  
EXHIBIT C NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND  
ORDINANCE .....C-1

**ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING SEWERAGE SYSTEM OF THE CITY OF NITRO; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$10,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, FROM TIME TO TIME IN ONE OR MORE SERIES AS DESIGNATED IN SUPPLEMENTAL RESOLUTIONS, OF THE CITY OF NITRO, THE PROCEEDS OF WHICH, SHALL BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF NITRO WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO PERMANENTLY FINANCE THE COST OF SUCH DESIGN, ACQUISITION AND CONSTRUCTION, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$9,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM BOND ANTICIPATION NOTES, TO TEMPORARILY FINANCE A PORTION OF THE COST OF SUCH DESIGN, ACQUISITION AND CONSTRUCTION; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AND ADOPTING OTHER PROVISIONS RELATED THERETO.**

Be It Ordained by the Council of the City of Nitro, West Virginia:

ARTICLE I

STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and other applicable provisions of law.

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

A. The City of Nitro, West Virginia (the "City" or the "Issuer"), now owns a sewerage system (the "System"), both within and without the corporate limits of the City, consisting of a sewage treatment plant or plants and its collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations and ejector stations and all other appurtenances, extensions, improvements and betterments necessary, appropriate, useful, convenient or incidental for the collection, treatment, purification and disposal in a sanitary manner of liquid and solid waste, sewage and industrial waste.

B. In accordance with Section 2 of the Act, the System is under the supervision and control of the Utility Board of the City (the "Utility Board").

C. The Utility Board has presented a petition to the City for the acquisition and construction of certain extensions, additions, betterments and improvements to the System (the "Project") as more fully described on Exhibit A, the enactment of this Ordinance and the issuance of the Sewerage System Revenue Bonds (the "Bonds") and the Sewerage System Bond Anticipation Notes (the "Notes"). The City has financed a portion of the design costs through the issuance of its \$800,000 Sewerage System Design Bond Anticipation Notes, Series 2013 A (The Huntington National Bank), dated September 20, 2013 (the "Series 2013 A Notes").

D. The estimated maximum cost of design, acquisition and construction of the Project is approximately \$7,600,000, which will be obtained from the proceeds of the Bonds and the Notes herein authorized.

E. The acquisition and construction of the System were financed or with proceeds of certain obligations of the City, which obligations are designated and have lien positions with respect to the Bonds as follows:

	<u>Designation</u>	<u>Lien Position</u>
1.	\$4,575,502 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 1996 A, dated December 10, 1996 (the "Series 1996 A Bonds");	First Lien
2.	\$2,050,000 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 2000 A, dated June 28, 2000 (the "Series 2000 A Bonds");	First Lien
3.	\$543,800 Sewer Revenue Bonds (West Virginia SRF Program), Series 2001 A, dated June 5, 2001 (the "Series 2001 A Bonds"); and	First Lien
4.	\$1,910,778 Sewer Revenue Bonds, (West Virginia SRF Program), Series 2009 A, dated November 12, 2009 (the "Series 2009 A Bonds").	First Lien

The Series 1996 A Bonds, the Series 2000 A Bonds, the Series 2001 A Bonds, and the Series 2009 A Bonds are collectively referred to as the "Prior Bonds." The Series 2013 A Notes will be paid in full with the issuance of the Bonds and/or Notes.

F. The City derives revenues from the System, and, except for the pledges thereof to secure and pay the Prior Bonds, said revenues are not pledged or encumbered in any manner.

G. It is necessary and essential to acquire and construct the Project, generally described on Exhibit A hereto and incorporated herein by reference, in order to preserve the public health, to be financed through the issuance of the Bonds, in the aggregate principal amount not to exceed \$10,000,000. The period of usefulness of the System after completion of the Project is not less than 40 years.

H. The estimated revenues to be derived in each year after the enactment of this Ordinance from the operation of the System will be sufficient to pay all Operating Expenses of the System, the principal of and interest on the Prior Bonds, the Notes and/or the Bonds and all funds and accounts and other payments provided for in this Ordinance and the Prior Ordinances.

I. The Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the form set forth in Exhibit B attached hereto and incorporated herein by reference with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the City.

J. All things necessary to make the Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the City according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Bonds, will be timely done and duly performed.

K. The enactment of this Ordinance, and the execution and issuance of the Bonds, subject to the terms thereof, will not result in any breach of, nor constitute a default under, any instrument to which the City is a party or by which it may be bound or affected.

L. The City is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and the System; 95% or more of the Net Proceeds of the Bonds are to be used for local government activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City).

M. It is deemed necessary for the City to issue the Bonds in the aggregate principal amount of not more than \$10,000,000, to permanently finance the costs of the acquisition and construction of the Project and, prior to the issuance of the Bonds, to issue the Notes in the aggregate principal amount of not more than \$9,000,000, to temporarily finance a portion of the costs of design, acquisition and construction of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; repayment of any interim financing notes; interest on the Notes; interest on the Bonds prior to and during construction or acquisition and for six 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, any fees or expenses of the Original Purchaser or DEP, commitment fees, discount, initial fees for the service of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds, and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of the same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the City for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of the indebtedness incurred by the City for such purposes shall be deemed part of the Cost of the Project.

N. It is in the best interests of the City that the Bonds be sold to the Original Purchaser(s) pursuant to the terms and provisions set forth in the Supplemental Resolution.

O. Prior to the issuance of the Bonds, the City shall obtain (i) a certificate from an independent certified public accountant stating that the coverage and parity tests of the Prior Bonds have been met; and (ii) the written consent of the registered owners of the Prior Bonds to the issuance of the Bonds on a parity with the Prior Bonds. The Bonds shall be issued with a lien on the Net Revenues on a parity with the lien held by the registered owners of the Prior Bonds. Other than the Prior Bonds and the Notes, there are no other outstanding bonds or obligations of the City which are secured by revenues or assets of the System.

The Notes shall be issued junior and subordinate to the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. The Notes shall be payable solely from and secured by the proceeds of the Bonds to be sold to the Authority on behalf of the SRF Program or any other WDA Program.

P. The City has complied with all requirements of West Virginia law relating to the authorization of the acquisition, construction and operation of Project and the System and issuance of the Bonds and the Notes, or will have so complied prior to the 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 not subject to appeal or rehearing.

Q. The City will not permit, at any time, any of the proceeds of the Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code.

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

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Bonds authorized to be issued hereunder by those who shall own the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the City and such Registered Owners, and the covenants and agreements herein set forth to be performed by

the City shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Bonds issued hereunder, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bond by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. Except as provided below, terms used in this Ordinance have the meanings set forth below, unless the context expressly requires otherwise.

“Act” shall mean Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

“Authority” shall mean the West Virginia Water Development Authority, which may be one of the original purchasers and Registered Owners of the Bonds and the Notes on behalf of the SRF Program and the WDA Program, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

“Bond Counsel” shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the City or the Utility Board, and shall initially mean Jackson Kelly PLLC, Charleston, West Virginia:

“Bond Insurer” shall mean any entity which shall insure all or any portion of the payment of principal of and interest on the Bonds and which shall be designated as such in the Supplemental Resolution, and in the event no such entity is so designated, all references in this Ordinance to the Bond Insurer shall be null and void and have no force and effect.

“Bond Register” shall mean the books of the City maintained by the Registrar for the registration and transfer of the Bonds.

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

“Bondholder” or “Holder of the Bonds” or “Owner of the Bonds” or “Registered Owner” or any similar term shall mean any person who shall be the Registered Owner of any Outstanding Bond as hereinafter defined.

“Bonds” shall mean the not more than \$10,000,000 in aggregate principal amount of Sewerage System Revenue Bonds of the City, authorized by this Ordinance to be issued from time to time in one or more series as designated in Supplemental Resolutions.

“Bonds Construction Trust Fund” shall mean the Bonds Construction Trust Fund created by Section 4.01 D hereof.

“Bond Purchase Agreement” shall mean, collectively, the Bond Purchase Agreements by and among the Authority, the DEP and the City, providing for the purchase of all

or a part of the Bonds from the City by the Authority, the forms of which are attached as exhibits in the Supplemental Resolution.

“Closing Date” shall mean the date or dates upon which there is an exchange of the Bonds and the Notes for all or a portion of the proceeds of the Bonds and the Notes from the Original Purchaser.

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

“Commission” shall mean the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Commission.

“Completion Date” shall mean the completion date of the Project as defined in the SRF Regulations.

“Consulting Engineers” shall mean S&S Engineers, Inc., Charleston, West Virginia, or any engineer or firm of engineers, licensed by the State, which shall at any time hereafter be retained by the City as Consulting Engineers for the System in accordance with Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended.

“Costs of the Project” shall mean those costs described in Section 1.02(M) hereof to be a part of the cost of the acquisition and construction of the Project.

“Council” or “City Council” shall mean the Council of the City.

“DEP” shall mean the West Virginia Department of Environmental Protection or any other agency of the State of West Virginia that succeeds to the function of the DEP.

“Depository Bank” shall mean the bank or banks to be designated as such in the Supplemental Resolution, and its successors and assigns.

“DTC” shall mean The Depository Trust Company, New York, New York.

“Fiscal Year” shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

“Independent Accountants” or “Independent Certified Public Accountants” shall mean any firm of certified public accountants which shall be retained by the City as independent accountants for the System.

“Mayor” shall mean the Mayor of the City.

“Municipal Bond Insurance Policy” shall mean the municipal bond insurance policy, if any, issued by the Bond Insurer simultaneously with the delivery of the Bonds, insuring

the payment of the principal of and interest on all or any of the Bonds in accordance with the terms thereof.

“Notes” shall mean the not more than \$9,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes of the City, authorized by this Ordinance to be issued in one or more series as designated in the Supplemental Resolution.

“Ordinance” shall mean this Ordinance.

“Original Purchaser” shall mean, collectively, either the Authority and/or the Underwriter which are expected to be the purchasers of the Bonds and/or the Notes directly from the City, as determined by resolutions supplemental hereto.

“Outstanding” when used with reference to Bonds, as of any particular date, describes all such Bonds theretofore and thereupon being authenticated and delivered, except (i) any such Bond canceled by the Registrar, at or prior to said date; (ii) any such Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity of any such Bond, shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any such Bond deemed to have been paid as provided in Section 6.13 hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any such Bond registered to the City.

“Paying Agent” shall mean the West Virginia Municipal Bond Commission or other entity designated as such for the Notes and Bonds in Supplemental Resolutions.

“Private Business Use” shall mean 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” shall mean the extensions, additions, betterments and improvements to the existing sewerage system of the City described in Exhibit A attached hereto.

“Purchase Price,” for the purpose of computation of the Yield of the Bonds, has the same meaning as the term “issue price” in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Bonds of each maturity is sold or, if the Bonds are privately placed, the price paid by the first buyer of the Bonds or the acquisition cost of the first buyer. “Purchase Price,” for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Bonds.

“Recorder” shall mean the Recorder of the City.

“Registrar” shall mean the entity named as such in the Supplemental Resolution.

“Regulations” shall mean the temporary and permanent regulations promulgated under the Code.

“Reserve Account” shall mean, collectively, one or more reserve accounts for the Bonds created by Section 4.03 hereof.

“Reserve Accounts” shall mean, collectively, the respective Reserve Accounts created for the Prior Bonds and the Bonds.

“Reserve Requirement” shall mean, as of any date of calculation, the lesser of (i) 10% of the original stated principal amount of the Bonds; (ii) the maximum amount of principal and interest which will become due on the Bonds in any year; or (iii) 125% of the average amount of principal and interest which will become due on the Bonds.

“Sinking Fund” shall mean, collectively, one or more Sinking Funds for the Bonds created by Section 4.03 hereof.

“Sinking Funds” shall mean, collectively, the respective Sinking Funds created for the Prior Bonds and the Bonds.

“SRF Program” shall mean the West Virginia Clean Water SRF 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” shall mean the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

“State” shall mean the State of West Virginia.

“Supplemental Resolution” shall mean any resolution, ordinance or order of the City supplementing or amending this Ordinance and, when preceded by the article “the”, refers specifically to the supplemental resolutions authorizing the sale of one or more series of the Bonds or the Notes; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Bonds or the Notes and not so included may be included in another Supplemental Resolution.

“Surplus Revenues” shall mean the Net Revenues not required by the Prior Ordinances and this Ordinance, as supplemented and amended, to be set aside and held in, including but not limited to, any sinking funds, reserve accounts and renewal and replacement funds.

“System” shall mean the complete existing sewerage system now owned by the City and managed by the Utility Board, consisting of a sewerage treatment and collection

system, and shall include any extensions, additions, betterments and improvements thereto, including the Project, hereafter acquired or constructed for the sewerage system from any sources whatsoever, both within and without the City.

“Term Bonds” shall mean the Bonds subject to mandatory sinking fund redemption as described in Section 3.12 hereof.

“Underwriter” shall mean one or more underwriting firms designated as such in the Supplemental Resolution.

“WDA Program” shall mean the Authority’s loan program, under which the Authority purchases the water development revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of the water development revenue bonds of the Authority.

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

Additional terms and phrases are defined in this Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with general accepted accounting principles.

The terms “herein”, “hereunder”, “hereby”, “hereto”, “hereof” and any similar terms refer to this Ordinance; and the term “hereafter” means after the date of the enactment of this Ordinance.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Ordinance so numbered.

ARTICLE II  
AUTHORIZATION OF EXTENSIONS, ADDITIONS,  
BETTERMENTS AND IMPROVEMENTS TO SYSTEM; AUTHORIZATION OF THE  
NOTES

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements. There is hereby authorized and ordered the acquisition and construction of the Project at an estimated cost of not to exceed \$7,604,000, in accordance with plans and specifications prepared by the Consulting Engineers, approved by the DEP and the City, and on file in the office of the Utility Board.

The City has received bids and will enter into contracts for the acquisition and construction of the Project which are in an amount and otherwise compatible with the financing plan submitted to the Original Purchaser.

Section 2.02. Authorization of the Notes. To provide funds for a portion of the cost of acquisition and construction of the Project, pending issuance of all or a portion of the Bonds to the Authority on behalf of the SRF Program, there shall be and hereby are authorized to be issued "Sewerage System Bond Anticipation Notes," of the City in an aggregate principal amount of not to exceed \$9,000,000. The exact amount and terms of the Notes shall be approved by the Council of the City in a resolution supplemental hereto. The text of the Notes shall be in substantially the form set forth in Exhibit B attached hereto.

Section 2.03. Security for the Notes. The principal of the Notes shall be payable solely from and secured by the proceeds of the Bonds to be sold to the Authority on behalf of the SRF Program or any other WDA Program. The Notes shall not, in any event, be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the proceeds of the Bonds to be sold to the Authority on behalf of the SRF Program or any other WDA Program. No Owner of the Notes shall ever have the right to compel the exercise of the taxing power of the City to pay the Notes or any interest thereon. The interest on the Notes shall be paid from the net revenues of the System but such payment shall be subordinate to the Prior Bonds.

Section 2.04. Designation of Notes as "Qualified Tax-Exempt Obligations." The City hereby designates the Notes as "qualified tax-exempt obligations" for purposes of Section 265(b)(3)(B) of the Code and covenants that the Notes do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income tax purposes (excluding, however, obligations issued to currently refund any obligation of the Issuer to the extent the amount of the refunding obligation does not exceed the amount of the refunded obligation and private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code), including the Notes, have been or shall be issued by the City, including all subordinate entities of the City, during the calendar year 2015, all as determined in accordance with the Code.

### ARTICLE III

#### AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Bonds. For the purposes of capitalizing interest on the Bonds, funding the Reserve Account for the Bonds, paying Costs of the Project not otherwise provided for (including the payment of the Notes), paying costs of issuance of the Bonds and related costs, or any or all of such purposes, as determined by Supplemental Resolutions, there shall be and hereby are authorized to be issued the Bonds of the City. The Bonds shall be issued from time to time in one or more series as set forth in the Supplemental Resolutions, designated as "Sewerage System Revenue Bonds", in an aggregate principal amount of not more than \$10,000,000. The Bonds shall be issued in such principal amounts, shall have the series designation, shall be dated as of the date of delivery thereof, shall bear interest at such rate or rates, not exceeding the then legal maximum rate, and shall mature at such times and in such amounts as shall be set forth in the Supplemental Resolution. The repayment of principal, interest and the SRF Administrative Fee, if any, on the Bonds shall be as set forth in the Supplemental Resolution. The Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and as the Council of the City shall prescribe by resolution (or by supplemental or amendatory ordinance of said Council as said Council shall determine) adopted in connection with the sale of such Bonds.

The 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 Bonds shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar.

Each series of Bonds shall be issued in fully registered form, in such denominations and shall have such terms as set forth in the Supplemental Resolution. The Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond in aggregate principal amount equal to the amount of the Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of the Bonds.

Section 3.02. Execution of Bonds. The Bonds shall be executed in the name of the City by the Mayor and attested by the City Recorder, and the seal of the City shall be affixed thereto or imprinted thereon. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the City before the Bonds so signed and sealed have been sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the City by such person as, at the actual time of the execution of such Bonds, shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.



Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Exhibit B, shall have been duly manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be, and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide owner for value.

So long as any of the Bonds remain Outstanding, the City, through the Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

Bonds shall be transferable only upon the books of the Registrar, by the Registered Owner thereof in person or by the Registered Owner's attorney duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or the Registered Owner's duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Registrar. For every such exchange or transfer of Bonds, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Registrar incurred in connection therewith, which sum or sums shall be paid by the City. The Registrar shall not be obliged to make any such exchange or transfer of Bonds during the 15 days preceding an interest payment date on the Bonds, or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the City may, in its discretion, issue and deliver a new Bond in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Registered Owner's furnishing the City proof of ownership thereof and

satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur and the Registrar shall authenticate the new Bond. All Bonds so surrendered shall be canceled by the Registrar and held for the account of the City. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the City may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Bonds be at any time found by anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Bonds not to be Indebtedness of the City. The Bonds shall not, in any event, be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided on a parity with the Prior Bonds. No Registered Owner of the Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay the Bonds or any interest thereon.

Section 3.07. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all the Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System on a parity with the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and the Prior Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund established herein or in the Prior Ordinances are hereby irrevocably pledged to the payment of the principal of and any interest on the Bonds and the Prior Bonds as the same become due.

Section 3.08. Form of Bonds. The text of the Bonds shall be substantially as set forth in Exhibit B, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof.

Section 3.09. Sale of Bonds. The Bonds shall be sold pursuant to the terms and conditions of a loan agreement or bond purchase agreement as set forth in a resolution supplemental hereto.

Section 3.10. Bonds are Issued as Parity Bonds. The Bonds are issued as and shall constitute additional Parity Bonds in accordance with the Prior Ordinances. Prior to the issuance of the Bonds, the following must occur:

A. The City must receive the written consent of the Authority for the issuance of parity bonds.

B. The coverage and parity requirements of the Prior Ordinances must be satisfied.

C. Unless waived in writing by the Authority, the City or the Utility Board must enter into written contracts for the immediate design, acquisition or construction of the Project not later than simultaneously with the delivery of the Bonds.

D. The Bonds shall not be issued unless all the payments into the respective funds and accounts provided for in the Prior Ordinances on account of the Prior Bonds and any other payments provided for in the Prior Ordinances, shall have been made in full as required to the date of delivery of the Bonds.

Section 3.11. Delivery of Bonds. The City shall execute and deliver the Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Bonds to the Original Purchaser upon receipt of the documents set forth below:

- (A) A request and authorization to the Registrar on behalf of the City, signed by an Authorized Officer, to authenticate and deliver the Bonds to the Original Purchaser;
- (B) Copies of this Ordinance and the Supplemental Resolution certified by the City Recorder; and
- (C) The unqualified approving opinion of Bond Counsel regarding the Bonds.

## ARTICLE IV

### APPLICATION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01. Application of Bond Proceeds. From the moneys received from the sale of the Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. All interest accrued on the Bonds from the date thereof to the date of delivery thereof shall be deposited with the Commission in the Sinking Fund and applied to payment of interest on the Bonds on the first interest payment date.

B. From the proceeds of the Bonds, there shall be deposited with the Commission in the Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

C. Next, from the proceeds of the Bonds, there shall be deposited with the Commission in the Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Reserve Account.

D. There is hereby created and established with the Depository Bank a special fund, designated the "Bonds Construction Trust Fund". The remaining moneys derived from the sale of the Bonds shall be deposited by the City in the Bonds Construction Trust Fund. Moneys in the Bonds Construction Trust Fund shall be used solely to pay Costs of the Project and costs of issuance of the Bonds and until so transferred or expended, are hereby pledged as additional security for the Bonds. All costs of issuance shall be paid within 60 days of the Closing Date.

E. After completion of acquisition and construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, the City shall (i) expend any remaining proceeds of the Bonds as provided in the Supplemental Resolution and (ii) file a schedule with the Authority and the DEP, setting forth the actual costs of the Project and sources of funds used therefor.

Section 4.02. Disbursements From the Bond Construction Trust Fund. Except as provided in Section 4.01 hereof, disbursements from the Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Utility Board of the following:

A certificate, signed by the general manager of the Utility Board 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 disbursements 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 Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the City.

The City shall expend all proceeds of the Bonds within 3 years of the date of issuance of the Bonds.

Section 4.03. Funds and Accounts; Flow of Funds. The funds and accounts established by the Prior Ordinances are hereby continued. In addition to the funds and accounts established by the Prior Ordinances, there are hereby created at the Commission the Sinking Fund, the Reserve Account and the Redemption Account with respect to the Bonds as further described in the Supplemental Resolution. Following the monthly payment of Operating Expenses, the City shall make monthly payments to the Commission for the Prior Bonds as required under the Prior Ordinances. The monthly payments to the Commission for the Bonds shall be set forth in the Supplemental Resolution.

Moneys in the respective Sinking Funds shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due. Moneys in the respective Reserve Accounts shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due, when other moneys in the respective Sinking Funds are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the respective Reserve Accounts shall be transferred, not less than once each year, to the Bonds Construction Trust Fund prior to completion of the Project and thereafter, to the respective Sinking Funds.

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

Moneys in the Sinking Funds and the Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 4.04 hereof.

If, on any monthly payment date, the revenues are insufficient to place the required amount in any of the funds or accounts as provided herein and in the Prior Ordinances, the deficiency shall be made up in subsequent payments, in addition to the payments which would otherwise be required to be made into the funds and accounts on subsequent payment dates.

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 First Lien Bonds and the Bonds and thereafter, with respect to the Second Lien Bonds, in accordance with the respective principal amounts then Outstanding.

The City 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.

Except as provided above and in the Supplemental Resolution, all sinking fund, reserve account, and renewal and replacement fund payments shall remain as governed by the Prior Ordinances.

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

Section 4.04. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank or such other bank or national banking association holding such fund or account, as the case may be, at the direction of the City in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the Prior Ordinances, the need for such moneys for the purposes set forth herein and the specified restrictions and provisions set forth in this Section 4.04.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount. The Commission, the Depository Bank or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss of such liquidation. The Depository Bank or such other bank or national banking association may make any and all investments permitted by this section through its own 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 City, at least once each year (or more often if reasonably requested by the City), a summary of such funds, accounts and investment earnings. The City shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Bonds from gross income for federal income tax purposes.

## ARTICLE V

### DEFAULT AND REMEDIES

Section 5.01. Events of Default. Each of the following events shall constitute an “Event of Default” with respect to the Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest on the Bonds; or
- (2) If default occurs in the City’s observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Ordinance, any supplemental resolution or in the Bonds, and such default shall have continued for a period of 30 days after the City shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Registered Owner of a Bond; or
- (3) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or
- (4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 5.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond or any Bond Insurer if the Bonds are insured 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 City to perform its duties under the Act and the Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the City to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

Section 5.03. Appointment of Receiver. Any Registered Owner of a Bond or any Bond Insurer if the Bonds are insured may, by proper legal action, compel the performance of the duties of the City under the Ordinance and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to the 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 City, with the power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Ordinance and the Act.

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

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Ordinance for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, possession of the System shall be surrendered to the City 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 City and for the joint protection and benefit of the City 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 City 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 Ordinance, and the title to and ownership of the System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.



## ARTICLE VI

### ADDITIONAL COVENANTS OF THE CITY

All the covenants, agreements and provisions of the Prior Ordinances shall remain in full force and effect as long as the Prior Bonds and the Bonds are outstanding and shall apply to the Bonds as if fully set out herein. The following covenants are supplemental and in addition to the covenants set forth in the Prior Ordinances.

Section 6.01. Completion of Project; Permits and Orders. The City shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing enterprise in good condition and in compliance with all federal and state requirements and standards.

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

Section 6.02. Insurance and Construction Bonds. The City hereby covenants and agrees that so long as the Bonds remain Outstanding, the City 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. The City will require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Original Purchaser. Such insurance shall be made payable to the order of the Registered Owners, the City, the prime contractor and all subcontractors, as their interests may appear. The City will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, to protect the interests of the City, the Registered Owners, the prime contractor and all subcontractors as their interests may appear during construction of the Project in the full insurable value thereof. In time of war, the City shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be disposed of as provided in the Ordinance and otherwise shall be placed in the Renewal and Replacement Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The City will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The City shall carry such other insurance as is required by the Original Purchaser, including but not limited to flood insurance and business interruption insurance, to the extent available at

reasonable cost to the City. The City shall verify all such insurance prior to commencement of construction.

The City 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 City shall verify such bonds prior to commencement of construction.

Section 6.03. Issuance of Other Obligations Payable Out of Revenues. In addition to the limitations on the issuance of parity obligations set forth in the Prior Ordinances, no parity obligations payable out of revenues of the System shall be issued after the issuance of the Bonds without the prior written consent of the Registered Owner of the Prior Bonds then Outstanding and without complying with the parity requirements of the Prior Ordinance and the Supplemental Resolution.

Section 6.04. Engineering Services and Operating Personnel. Prior to the issuance of the Bonds, the City shall obtain the certificate of the Consulting Engineers, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to 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 City shall provide and maintain competent and adequate engineering services satisfactory 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 City at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

Section 6.05. Compliance With Law. The City hereby covenants and agrees to perform, satisfy and comply with all terms, conditions and requirements of all applicable laws, rules and regulations issued by the Authority, the DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

Section 6.06. Books; Records and Audit. The City 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 City shall permit the Original Purchaser, 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 City shall submit to the Original Purchaser 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 any state and federal grants or other sources of financing for the Project.

All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the City.

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

The accounting system for the System shall follow current generally accepted accounting principles and safeguards in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the City. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other bookkeeping records as prescribed by the City. The City 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 City shall be reported to such agent of the City as the Council shall direct.

The City shall file with the Original Purchaser, and shall mail in each year to any Registered Owner or Owners of Bonds requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses and Net Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Ordinance and the status of all said funds and accounts.
- (C) The amount of any bonds, notes or other obligations Outstanding.

The City shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, and, shall mail upon request, and make available generally, the report of the Independent Accountants, or a summary thereof, to any Registered Owner or Owners of Bonds. The report of said audit shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet its Operating Expenses and debt service and reserve requirements.

Section 6.07. Operating Budget. The Utility Board shall annually prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for the operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Original Purchaser within 30 days of the adoption thereof.

Section 6.08. Tax Covenants. The City hereby further covenants and agrees as follows:

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

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

C. PRIVATE LOAN LIMITATION. The City shall assure that not in excess of the lesser of 5% of the proceeds of the Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

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

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

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

Section 6.09. Rebate Covenant. The City is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System. As covenanted above, the Bonds are not private activity bonds within the meaning of the Code, and ninety-five percent (95%) or more of the net proceeds (as defined in the Code) of the Bonds will be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City). The City reasonably expects to expend the proceeds of the Bonds within the time period that would provide an exception from

the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the City is in fact subject to such rebate requirements, the City hereby covenants to rebate to the United States the amounts required by the Code and to take all steps necessary to make such rebates. In the event the City fails to make such rebates as required, the City shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of interest on the Bonds.

Section 6.10. Arbitrage. The City covenants that (i) it will not take, or permit or suffer to be taken, any action with respect to the proceeds of the Bonds which would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the 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 6.11. Tax Certificate and Rebate. The City shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Bonds. In addition, the City covenants to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds and fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of the Ordinance.

If it is determined that the City does not qualify for an exception to Section 148 of the Code or the City is otherwise subject to rebate in connection with the Bonds, the City shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the City shall deposit, or cause to be deposited, with the Depository Bank in a separate fund designated the Rebate Fund, such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder, if any, and used only for payment of rebatable arbitrage to the United States. The City shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the City to be used for any lawful purpose of the System. The City shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States

which are required, the City shall assure that such payments are made by the City to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the City shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the City. The City may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the City may deem appropriate in order to assure compliance with this Section 6.11. The City shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 6.11 in accordance with the requirements of Section 148(f) of the Code. In the event the City fails to make such rebates as required, the City shall pay the required rebate amount and all interest, penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

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

Section 6.12. Securities Laws Compliance. The City will provide the Original Purchaser, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Original Purchaser may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240). The City will also deliver a continuing disclosure agreement or certificate in form acceptable to the Original Purchaser sufficient to ensure compliance with SEC Rule 15c2-12, as amended from time to time.

Section 6.13. Defeasance of Bonds. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the Registered Owners of the Bonds, the principal thereof, and redemption premium, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then the pledge of Net Revenues and any other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the City to the Registered Owners 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 Bonds from gross income for federal income tax purposes.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such

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

Section 6.14. Rates and Charges. The City has obtained any and all approvals of rates and charges required by state law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the City duly enacted on March 5, 2004, which rates are incorporated herein by reference as a part hereof.

So long as the Bonds are outstanding, the City 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 this Ordinance. In the event the schedule of rates, fees and charges initially established for the System in connection with the Bonds shall prove to be insufficient to produce the required sums set forth in this Ordinance, the City 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 Ordinance. In any event, subject to any requirements of law, the City shall not reduce the rates or charges for services set forth in the rate ordinance described above.

The City shall diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent

to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The City further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System, and any services and facilities of the water system, if so owned by the City, 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 City, the City 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 Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 6.15. Contracts. The City shall, simultaneously with the delivery of the Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.



## ARTICLE VII

### REGISTRAR

Section 7.01. Appointment of Registrar. The Registrar for the Bonds shall be appointed pursuant to the Supplemental Resolution. The City is hereby authorized and directed to enter into an agreement with the Registrar, the substantial form of which agreement is to be approved by Supplemental Resolution.

Section 7.02. Responsibilities of Registrar. The recitals of fact in the Bonds shall be taken as statements of the City, and the Registrar shall not be responsible for their accuracy. The Registrar shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Bonds by the City. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication and Registration on the Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described above.

Section 7.03. Evidence on Which Registrar May Act. Except as otherwise provided herein, the Registrar shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. Whenever the Registrar shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the City, but in its discretion the Registrar may instead accept other evidence of such fact or matter.

Section 7.04. Compensation and Expenses. The City shall pay to the Registrar from time to time reasonable compensation for all services, including the transfer of registration of Bonds, the first exchange of Bonds and the exchange of Bonds in the event of partial redemption, incurred in the performance of its duties hereunder.

Section 7.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Registered Owners or effect or aid in any reorganization growing out of the enforcement of the Bonds or this Ordinance, whether or not any such committee shall represent the Registered Owners of a majority in principal amount of the Bonds Outstanding.

Section 7.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than 60 days' written notice to the City. A copy of such notice shall also be mailed to each Registered

Owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the City or the Registered Owners, in which event such resignation shall take effect immediately; provided that, in no event shall such resignation take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 7.07. Removal. The Registrar may be removed at any time by the City, the Bond Insurer or the Registered Owners of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the City, the Bond Insurer or by such Registered Owners or their attorneys duly authorized in writing and delivered to the City, as the case may be. Copies of each such instrument shall be delivered by the City to the Registrar. Such removal shall take effect upon the date stated in such instrument; provided that, in no event shall such removal take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 7.08. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Registered Owners of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Registered Owners or their attorneys duly authorized in writing and delivered to the City and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the City shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Registered Owners. A copy of such notice shall also be mailed to each Registered Owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Any successor Registrar appointed by the City shall, immediately and without further act, be superseded by a Registrar appointed by such Registered Owners. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the City written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Registered Owner may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance.

Section 7.09. Transfer of Rights and Property to Successor. Any predecessor Registrar shall pay over, assign and deliver any moneys, books and records held by it to its successor.

Section 7.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall

be a bank, trust company or national banking association meeting the requirements set forth in Section 7.08 hereof.

Section 7.11. Adoption of Authentication. In case any of the Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Bonds so authenticated, and, in case any Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Bonds in the name of the predecessor Registrar or in its own name.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01. Modification or Amendment. Prior to the issuance of the Bonds, this Ordinance may be amended or supplemented in any way by a Supplemental Resolution. All provisions required by the Bond Insurer, if any, shall be set forth in the Supplemental Resolution and to the extent they constitute an amendment or modification of this Ordinance, shall be controlling. Following issuance of the Bonds, no material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Registered Owners shall be made without the consent in writing of the Registered Owners of the Bonds then Outstanding and to be affected by said modification; provided, however, that no change shall be made in the maturity of any Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the City to pay such principal and interest out of the revenues of the System without the consent of the Registered Owner thereof. No amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds required for consent to the above permitted amendments or modifications. Notwithstanding the foregoing, this Ordinance may be amended without the consent of any Registered Owner as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest on the Bonds from gross income of the Registered Owners thereof.

Section 8.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Bonds.

Section 8.03. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, other than the Prior Ordinances, in conflict with this Ordinance are, to the extent of such conflict, repealed.

Section 8.04. Covenant of Due Procedure. The City covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the final enactment and passage of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Recorder and members of Council and the Utility 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 8.05. Statutory Notice and Public Hearing. Upon adoption hereof, the abstract of this Ordinance in the form set forth in Exhibit C attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks, with at least 6 full days intervening between each publication, in the Charleston Gazette-Mail a qualified newspaper

published and of general circulation in the City of Nitro, together with a notice stating that this Ordinance has been adopted and that the City contemplates the issuance of the Bonds, and that any person interested may appear before the Council upon a certain date, 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 City for review by interested persons during office hours of the City. The Council hereby determines that the abstract contains sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Section 8.06. Effective Date. This Ordinance shall take effect immediately following public hearing and final reading hereof.

**CERTIFICATE OF TRUTH AND ACCURACY**

I, the undersigned, as Recorder of the City of Nitro, Kanawha County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of the official record of the City of Nitro, such records being in the custody of the undersigned and maintained at the City of Nitro, City Hall, Nitro, Kanawha County, West Virginia, and that the action taken by the Council in the foregoing document remains in full force and effect and has not been amended.

Dated this 3<sup>rd</sup> day of December, 2015.



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Recorder

[SEAL]

## **EXHIBIT A**

### **DESCRIPTION OF PROJECT**

The design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City, including: the extension of service to approximately 94 customers in the Blakes Creek and Eastwood Acres areas; the replacement of sewer lines on Bailes Drive; the replacement of Pump Station No. 6; the installation of telemetry at eight major pump stations; the installation of storm sewers in the Pump Station No. 7 drainage area; relining existing 42 inch clay tile brick sewer line through Board of Education property and rehabilitation of manholes; replacement of existing belt filter press with a new, larger press; replacement of existing sewer line on Reeves Drive; relocation of approximately 200 hundred linear feet of the existing eight-inch force mains at the Poca High School pump station and all appurtenances necessary therefor.

EXHIBIT B

[FORM OF BOND]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA  
CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS, SERIES \_\_\_\_\_

No. AR-\_\_

\$

KNOW ALL MEN BY THESE PRESENTS: That CITY OF NITRO, a municipal corporation and political subdivision of the State of West Virginia, in Kanawha County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority "), or registered assigns, the sum of DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the City 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 \_\_\_\_\_, \_\_\_\_\_, 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 of \_\_\_\_\_ percent (\_\_\_\_%) per annum as set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Ordinance) on this Bond shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the Paying Agent(as defined in the hereinafter described Ordinance). The interest on this Bond is payable by check or draft mailed to the registered owner hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Ordinance) on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable so long as the Authority is registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West



Virginia Department of Environmental Protection (the "DEP") and as otherwise provided by the Loan Agreement dated \_\_\_\_\_, among the Authority, the DEP and the City.

This Bond is issued (i) to pay the costs of design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City (the "Project"); (ii) to fund a reserve account for this Bond; and (iii) to pay certain costs of issuance hereof and related costs. The existing sewerage system of the City, the Project and any further additions, betterments and 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 of the Code of West Virginia, 1931, as amended (the "Act"), and in Ordinance passed by the City 20\_\_\_\_\_, and a Supplemental Resolution adopted by the City on \_\_\_\_\_, 20\_\_\_\_ (collectively, the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Ordinance.

This Bond is issued on a parity with respect to liens, pledge and source of and security for payment with the Prior Bonds, all as defined in the Ordinance.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues as defined in the Ordinance, to be derived from the operation of the System, on a parity with the Prior Bonds moneys in the Reserve Account created under the Ordinance (the "Series \_\_\_\_\_ Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City 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 \_\_\_\_\_ Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on this Bond and all 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 \_\_\_\_\_ Bonds Reserve Account an amount 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 obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of this Bond for the terms of which reference is made to the Ordinance. Remedies

provided the registered owners of this Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of the Registrar, kept for that purpose at the office of the Registrar, by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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 City, 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 City for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, CITY OF NITRO has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, \_\_\_\_\_.

[SEAL]

\_\_\_\_\_

\_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_  
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

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

Date: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

Total \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

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\_\_\_\_\_ the  
within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney  
to transfer the said Bond on the books kept for registration of the within Bond of the said City  
with full power of substitution in the premises.

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

In the presence of:

**FORM OF NOTE**

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA  
CITY OF NITRO  
SEWER REVENUE BOND ANTICIPATION NOTES, SERIES 2015 B

No. BR-1

\$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That on this \_\_\_\_ day of \_\_\_\_\_, 2015, the CITY OF NITRO, a municipal corporation and political subdivision of the State of West Virginia in Kanawha County of said State (the "City"), for value received, hereby promises to pay, but only from the special funds provided therefor, as hereinafter set forth, to \_\_\_\_\_ (the "Owner"), or registered assigns, the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), on \_\_\_\_\_, or upon the issuance of revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes, whichever shall occur earlier. The interest on this Note shall be at the rate of \_\_\_\_% per annum, payable semiannually on the 1<sup>st</sup> day of each \_\_\_\_\_ and \_\_\_\_\_, commencing \_\_\_\_\_, 20\_\_. The entire outstanding principal balance of this Note and all interest accrued hereon shall be payable in full on \_\_\_\_\_, 20\_\_, or upon the issuance of revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes, whichever shall occur earlier.

The annual interest rate for this Note is computed on a simple interest/365 day basis.

The Registrar, as hereinafter defined, shall notify the City of the amount of interest so accrued. Interest is payable by check or draft mailed to the Owner at the address as it appears on the books of Registrar, as hereinafter defined, or by wire transfer or other mutually agreeable method. This Note shall be payable as to principal upon surrender at the principal office of The Huntington National Bank, as registrar and paying agent (the "Registrar"), in any coin or currency which on the date of payment of principal is legal tender for the payment of public and private debts under the laws of the United States of America.

This Note is subject to prepayment without penalty in whole or in part after \_\_\_\_\_, 20\_\_, upon the issuance of revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes.

This Note is issued for the purposes of (i) temporarily financing a portion of the costs of the acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage system of the City (the "Project"); and (ii) paying certain costs of issuance and related costs.



This Note 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 of the Code of West Virginia, 1931, as amended (the "Act"), and an Note Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2015, as supplemented by a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2015 (collectively, the "Ordinance"), and is subject to all the terms and provisions thereof.

THIS NOTE IS ISSUED JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S: (I) SEWER REVENUE BONDS (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SERIES 1996 A, DATED DECEMBER 10, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,575,902 (THE "SERIES 1996 A BONDS"); (II) SEWER REVENUE BONDS (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SERIES 2000 A, DATED JUNE 28, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,050,000 (THE "SERIES 2000 A BONDS"); (III) SEWER SYSTEM REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 5, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$543,900 (THE "SERIES 2001 A BONDS"); AND (IV) SEWER REVENUE BONDS (WEST VIRGINIA SRF PROGRAM), SERIES 2009 A, DATED NOVEMBER 12, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,910,778 (THE "SERIES 2009 A BONDS").

The principal of and interest on this Note are payable solely from and secured by a first lien on (1) the proceeds of any revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes; and (2) Surplus Revenues, if any, as defined in the Ordinance. This Note does not constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, nor shall the City be obligated to pay the same or the interest hereon except from the sources set forth above.

This Note and the interest thereon are, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

Subject to the requirements for transfer set forth below, this Note is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia. This Note is transferable only by the transfer of registration upon the books of the Registrar by the Owner in person or by its attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner or its duly authorized attorney.

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 Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Note, together with all other obligations of the City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

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

This Note shall not be valid or obligatory unless authenticated and registered by the Registrar by the execution of the Registrar's Certificate of Authentication and Registration attached hereto and incorporated herein.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_ this Note of the City of Nitro, and does hereby irrevocably constitute and appoint \_\_\_\_\_, attorney to transfer said Note on the books of said City with full power of substitution in the premises.

DATED: \_\_\_\_\_

IN THE PRESENCE OF: \_\_\_\_\_

## EXHIBIT C

### CITY OF NITRO, WEST VIRGINIA

#### NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on October \_\_\_\_, 2015, the Council of the City of Nitro, West Virginia (the "City") adopted an ordinance which, among other things:

1. Authorized the acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the City's existing sewerage system (the "System"), the temporary financing of such costs thereof through the issuance of not more than \$9,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes (the "Notes"), and the permanent financing of such costs thereof through the issuance of not more than \$10,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, from time to time in one or more series (the "Bonds").

2. Directed that the Notes and the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution.

3. Directed the continuation of the revenue fund and the disposition of the System revenues; provided for the payment of operating expenses of the System and debt service on the Bonds; directed the creation of sinking funds and reserve accounts for the Bonds and continuation of the renewal and replacement fund; and directed the creation of a bond construction trust fund and the disbursement of the Note and Bond proceeds.

4. Provided that the Bonds shall not be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, 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 such Net Revenues; provided certain conditions for the issuance of additional bonds.

5. Provided that the Notes shall not be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the proceeds of the Bonds to be sold to the West Virginia Water Development Authority on behalf of the SRF Program.

6. Provided for insurance coverage on the Project and the System, enforcement of collection of fees, rates or other charges for the System and other covenants in favor of the registered owners; established the events of default and the remedies of the registered owners; and provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The City contemplates the issuance of the Notes and 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 Nitro at a regular meeting on \_\_\_\_\_, 2015, at \_\_\_\_\_ p.m., in the Council Chambers, City Hall, Nitro, 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 of the City on \_\_\_\_\_, 2015, is on file with the Recorder for review by interested persons at the City Hall during regular office hours, to-wit: 8:00 a.m. to 4:00 p.m., Monday through Friday.

/s/ \_\_\_\_\_  
Recorder of the City of Nitro,  
West Virginia

CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A  
(WEST VIRGINIA CWSRF PROGRAM)

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 NITRO SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A (WEST VIRGINIA CWSRF PROGRAM); 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 Nitro (the "Issuer") has duly and officially adopted a Bond and Note Ordinance on October 20, 2015, effective November 17, 2015 (the "Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING SEWERAGE SYSTEM OF THE CITY OF NITRO; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$10,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, FROM TIME TO TIME IN ONE OR MORE SERIES AS DESIGNATED IN SUPPLEMENTAL RESOLUTIONS, OF THE CITY OF NITRO, THE PROCEEDS OF WHICH, SHALL BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF NITRO WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO PERMANENTLY FINANCE THE COST OF SUCH DESIGN, ACQUISITION AND CONSTRUCTION, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$9,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM BOND ANTICIPATION NOTES, TO TEMPORARILY FINANCE A PORTION OF THE COST OF SUCH DESIGN, ACQUISITION AND CONSTRUCTION; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH

BONDS AND NOTES; AND ADOPTING OTHER PROVISIONS RELATED THERETO.

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

WHEREAS, the Ordinance provides for the issuance from time to time of the Sewerage System Revenue Bonds, in one or more series of the Issuer, in an aggregate principal amount not to exceed \$10,000,000 (the "Bonds"), all in accordance with Chapter 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"); and in the Ordinance it is provided that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of each series of the Bonds should be established by a supplemental resolution, and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Ordinance, pursuant to Section 6 of the Act, directed the Issuer to publish an abstract of the Ordinance (the "Abstract"), together with a notice that the Ordinance has been adopted, that the Issuer contemplates the issuance of the Bonds and the Notes as described in the Ordinance and that any person interested may appear before the Council upon a certain day and present protests (the "Notice");

WHEREAS, the Ordinance required that the Abstract and Notice be published as a Class II legal advertisement in the Charleston Gazette-Mail, a general circulation in the City of Nitro, and the first publication of such Abstract and Notice at which interested persons may appear before the Council and present protest, and the last publication of such Abstract and Notice was to be prior to said date set by the Ordinance and the Notice;

WHEREAS, the Ordinance and the Notice provided for a public hearing to be held at 7:00 p.m., prevailing time on November 3, 2015, in Council Chambers in City Hall;

WHEREAS, on September 20, 2013, the Issuer issued its Sewerage System Design Bond Anticipation Notes Series 2013 A (the Huntington National Bank) (the "Design Notes") to finance the design of the Project pending issuance of the bonds;

WHEREAS, the Design Notes are currently outstanding in the amount of \$679,519;

WHEREAS, the Issuer has received the commitment of West Virginia Department of Environmental Protection to authorize the West Virginia Water Development Authority to purchase bonds through the Clean Water Revolving Fund Program (the "CWSRF") in the amount not to exceed \$679,519 to pay the Design Notes thereby permanently financing the costs of the design of the Project;

WHEREAS, the Issuer desires to issue its Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program) (the "Series 2015 A Bonds" or the "Bonds") pursuant to the Ordinance to permanently finance the cost of design of the Project;

WHEREAS, simultaneously with the issuance of the Series 2015 A Bonds the Issuer intends to issue its Sewerage System Bond Anticipation Notes, Series 2015, to finance a portion of the costs of acquiring and constructing the Project (the "2015 Notes");

WHEREAS, the 2015 Notes will be secured by future sewer revenue bonds to be issued by the Issuer to the CWSRF and the interest on the 2015 Notes will be secured by the Net Revenues of the System, but junior and subordinate to the Prior Bonds and the Series 2015 A Bonds;

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Bond Purchase Agreement to be entered into among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") (the "Bond Purchase Agreement") be approved, executed 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; and

WHEREAS, the Issuance deems it essential and desirable that the Resolution be adopted, that the Ordinance be put into effect, that the Series 2015 A Bonds be issued and the Design Notes be paid in full.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA, AS FOLLOWS:

Section 1. It is hereby found and determined that:

(A) The Notice of Public Hearing and Abstract of Bond and Note Ordinance (the "Notice") was duly published in the Charleston Gazette-Mail, a qualified newspaper published and of general circulation in the Issuer, with the first publication thereof being not less than 10 days before the day set by the Ordinance and the Notice for the public hearing at which interested persons may appear before the Governing Body and present protests and suggestions and with the last publication thereof being prior to said date set by the 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 Ordinance and the Notice, the City Recorder has maintained in his or her office a certified copy of the Ordinance for review by interested persons during the regular office hours of such office;

(C) In Council Chambers, Nitro Community Center, Nitro, West Virginia, on November 3, 2015, at 7:00 p.m., prevailing time, in accordance with the Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Ordinance should be put into effect and heard all protests and suggestions with regard thereto;



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

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

Section 2. The Issuer shall sell the Bonds to the Authority on behalf of the DEP pursuant to the Bond Purchase Agreement.

Section 3. Pursuant to the Ordinance, there are hereby authorized to issue the following Bonds of the Issuer:

The City of Nitro Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program), shall be in the form of a single bond, shall be issued in the principal amount of \$679,519, shall be dated the date of delivery, shall finally mature no later than December 1, 2039, and shall bear 0.5% interest per annum. The principal and interest of the Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2017, in the amounts as set forth in the Schedule Y attached to the Bond Purchase Agreement and incorporated in and made a part of the Series 2015 A Bonds. The Series 2015 A Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the Bond Purchase Agreement, so long as the Authority shall be the registered owner of the Series 2015 A Bonds. The Issuer does hereby approve and shall pay the SRF Administrative Fee equal to 0.5% of the principal amount of the Series 2015 A Bonds set forth in the "Schedule Y" attached to the Bond Purchase Agreement.

Section 4. The Issuer hereby appoints and designates The Huntington National Bank, Charleston, West Virginia, to serve as Depository Bank for the Bonds under the Ordinance.

Section 5. The Municipal Bond Commission (the "Commission") is appointed as Paying Agent for the Bonds.

Section 6. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Ordinance.

Section 7. The Bond Purchase Agreement, attached hereto as Exhibit A and incorporated herein by reference, and the execution and delivery by the Mayor thereof shall be and the same are hereby authorized, approved, and directed. The Mayor shall execute and deliver the Bond Purchase Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Bond Purchase Agreement by the Mayor shall be conclusive evidence of any approval required by this Section, and authorization of any action required by

the Bond Purchase Agreement relating to the issuance and sale of the Bonds, including the payment of all necessary fees and expenses in connection therewith.

Section 8. The Issuer hereby appoints and designates The Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the 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 9. Pursuant to Section 4.03 of the Ordinance, there are hereby created at the Commission the Series 2015 A Bonds Sinking Fund, the Series 2015 A Bonds Reserve Account and the 2015 Notes Payment Account. Following the monthly payment of Operating Expenses, the Issuer shall make monthly payments to the Commission for the Prior Bonds as required under the Prior Ordinances and the Series 2015 A Bonds and the 2015 Notes as follows:

(1) Simultaneously with the interest payments made pursuant to the Prior Ordinances with respect to the Prior Bonds, the Issuer shall also deposit with the Commission in the Series 2015 A Bonds Sinking Fund on the first day of each month, commencing 4 months prior to the first interest payment date of the Series 2015 A Bonds, an amount equal to 1/3 of the amount of interest which will become due on the Series 2015 A Bonds on the next ensuing interest payment date; provided that , in the event the period to elapse between the date of such initial deposit in the Series 2015 A Bonds Sinking Fund and the next interest payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next interest payment date, the required amount of interest coming due on such date.

(2) Simultaneously with the principal payments made pursuant to the Prior Ordinances with respect to the Prior Bonds, the City shall also deposit with the Commission in the Series 2015 A Bonds Sinking Fund on the first day of each month, commencing 4 months prior to the first principal payment date of the Series 2015 A Bonds, an amount equal to 1/3 of the amount of principal which will mature and become due on the Series 2015 A Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2015 A Bonds Sinking Fund and the next annual principal payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next principal payment date, the require amount of principal coming due on such date.

(3) Simultaneously with the reserve account payments made pursuant to the Prior Ordinances with respect to the Prior Bonds, the Issuer shall also deposit with the Commission in the Series 2015 A Bonds Reserve Account, if not fully funded upon issuance of the Series 2015 A Bonds, on the first day of each month, commencing 4 months prior to the first principal payment date of the Series 2015 A Bonds, an amount equal to 1/3 of the Series 2015 A Bonds Reserve Requirement, until the amount in the Series 2015 A Bonds Reserve Account equals the Series 2015 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 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 2015 A Bonds Reserve Requirement.

(4) The Issuer shall next, on the first day of the month, commencing on January 1, 2016, transfer from the Revenue Fund and remit to the Commission for deposit in the 2015 Notes Payment Account, an amount equal to 1/6 of the amount of interest which will become due on the next ensuing semiannual interest payment date; provided that in the event the period to elapse between the date of such initial deposit to the Commission and the next semiannual interest payment date is less than 7 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next semiannual interest payment date, the required amount of interest coming due on such date.

(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 ½% of the Gross Revenues each month (as previously set forth in the Prior Ordinances and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the City or the Depository Bank and shall be invested and reinvested in accordance with the Ordinance. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, or improvements or extensions to the System; provided that, any deficiencies in any Reserve Account, except to the extent such deficiency exists because the required payments into 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) Proceeds of future revenue bonds sold to the Authority shall be deposited by the Issuer in the 2015 Notes Payment Account and applied by the Commissioner to the payment of principal of the 2015 Notes.

Section 10. 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 Ordinance approved and provided for, to the end that the Bonds may be delivered to the Authority pursuant to the Bond Purchase Agreement on or about December 3, 2015.

Section 11. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of direct obligations of, or obligations the timely payment of principals of and interest on which is guaranteed by, the United States of America, 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.

Section 12. Series 2015 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2015 A Bonds Sinking Fund, as capitalized interest.

Section 13. Series 2015 A Bonds proceeds in the amount of \$-0- shall be

deposited in the Series 2015 A Bonds Reserve Account.

Section 14. The Council hereby approves as the first draw of the Series 2015 A Bonds proceeds the prepayment of the Design Notes and further finds and determines (A) that none of the items for which payment is proposed to be made has formed the basis for any disbursement theretofore made; (B) that each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project; (C) that each of such costs has been otherwise properly incurred; and (D) that payment for each of the items proposed is now due and owing. The Council hereby authorizes and directs the Utility Board to review and approve future invoices for the Project and direct the payment from Series 2015 A Bonds and 2015 Notes proceeds.

Section 15. The proceeds of the Series 2015 A Bonds shall be credited to the Series 2015 A and the 2015 Bonds Constitution Trust Fund and applied to the payment in full of the Sewerage System Bond Anticipation Notes, Series 2013 A (The Huntington National Bank).

Section 16. The Project and the financing thereof, in part with proceeds of the Series 2015 A Bonds and the 2015 Notes, 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 17. The Issuer hereby approves and accepts all contracts relating to the financing and undertaking of the Project.

Section 18. The Issuer shall not permit at any time or times any of the proceeds of the Series 2015 A Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Series 2015 A Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Series 2015 A Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and Treasury Regulations to be promulgated thereunder.

Section 18. This Supplemental Resolution shall be effective immediately following adoption hereof.

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Adopted this 17<sup>th</sup> day of November, 2015.

Dave Conboet  
Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly enacted by the City Council of the CITY OF NITRO on the 17<sup>th</sup> day of November, 2015.

Dated this 3<sup>rd</sup> day of December, 2015.

[SEAL]

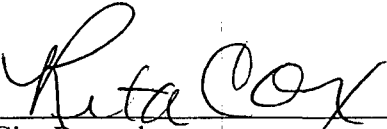
  
\_\_\_\_\_  
City Recorder

EXHIBIT A

(BOND PURCHASE AGREEMENT)

BOND PURCHASE AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND BOND PURCHASE AGREEMENT (the "Bond Purchase 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 NITRO  
(2013S-1427/C-544273)  
(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 acquire bonds of 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 utilize moneys from the Fund to purchase the bonds of local governments to provide the financing 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 Purchase of Bonds with attachments and exhibits and an Amended Application for Purchase of Bonds also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference;

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; and

WHEREAS, the Local Government meets the "disadvantaged community" provisions of the SRF Regulations.

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, who was selected pursuant to Article 1, Chapter 5G of the Code of West Virginia of 1931, as amended.

1.3 “Decentralized System” means wastewater treatment systems that treat wastewater, then reusing and/or dispersing the reclaimed water, as close to where it is generated as practical in each circumstance. A Decentralized System may include: on-site systems contained entirely within the simple boundaries of the lot it serves; small-scale collective systems, with their reuse/dispersal sites on easements on the lots served, on vacant lots purchased for this purpose, on off-site properties, or a combination of these; larger scale collective systems utilizing dispersed or aggregated reuse/dispersal sites or discharging to surface water.

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, and to be purchased by the Authority with money held in the Fund, all in accordance with the provisions of this Bond Purchase 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, as amended.

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 Bond Purchase 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 Bond Purchase 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, in accordance with generally accepted governmental accounting standards. 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 Local Bonds proceeds 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 Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Local Government shall provide and maintain competent and adequate engineering services satisfactory to the Authority and DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, DEP and the Local Government at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Government shall require the Consulting Engineers to submit Record Drawings, 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 or updated Operation and Maintenance Manual, if necessary 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 a state certified plant operator prior to the Project being 50% complete and notify the DEP of such employment. The Local Government shall retain the operator(s) to operate the System during the entire term of this Bond Purchase Agreement.

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 20<sup>th</sup> of each month to the DEP and the Authority.

2.13 The Local Government shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia (the "PSC").

2.14 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 Purchase of Local Bonds; Issuance of Local Bonds

3.1 The agreement of the Authority and DEP to purchase the Local Bonds 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 Local Bonds will be expended and the procedures as to the disbursement of bond 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 Bond Purchase 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 proceeds of the Local Bonds 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 Bond Purchase 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 purchase the Local Bonds of the Local Government and the Local Government shall issue and sell the Local Bonds to the Authority, and in furtherance thereof it is agreed that the Local Government shall sell to the Authority and the Authority shall purchase 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 Local Bonds shall be secured and shall be repaid in the manner hereinafter provided in this Bond Purchase 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 Closing."

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 financing of wastewater treatment projects and that the obligation of the Authority to purchase the Local Bonds is subject to the Local Government's fulfilling all of the terms and conditions of this Bond Purchase Agreement on or prior to the Date of 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 bonds will be purchased 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.

3.7 The Local Government shall comply with all federal requirements applicable to the Loan (including those imposed by P.L. 113-76, Consolidated Appropriations Act, 2014, and related SRF Policy Guidelines issued by the EPA) which the Local Government understands includes, among other things, requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Local Government has requested and obtained a waiver from the EPA pertaining to the Project or (ii) DEP has otherwise advised the Local Government in writing that the American Iron and Steel Requirement is not applicable to the Project.

3.8 The Local Government shall comply with all record keeping and reporting requirements under the Clean Water Act, including any reports required by a Federal agency or DEP such as performance indicators of program deliverables, information on costs and Project progress. The Local Government understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

#### ARTICLE IV

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

4.1 The Local Government shall, as one of the conditions of the Authority and DEP to purchase the Local Bonds, 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 SRF 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 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 Local Bonds 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 two percent (2%) of the proceeds of the Local Bonds will be advanced on the Date of 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 purchase the Local Bonds 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 purchase the Local Bonds.

## 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 Bond Purchase Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to purchase the Local Bonds, 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 Bond Purchase 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 Bond Purchase Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to this Bond Purchase Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Local Bonds 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 Bond Purchase 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 Bond Purchase Agreement.

6.2 The Local Government hereby warrants and represents that all information provided to the Authority and DEP in this Bond Purchase 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 purchasing and receiving the Local Bonds, the Authority and DEP shall have the right to cancel all or any of their obligations under this Bond Purchase Agreement if (a) any representation made to the Authority and DEP by the Local Government in connection with the issuance of the Local Bonds 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 Bond Purchase Agreement.

6.3 The Local Government hereby agrees to repay on or prior to the Date of Closing any moneys due and owing by it to the Authority or any other lender for the planning or design of the Project.

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 Bond Purchase Agreement by the Authority as soon as practicable after the Date of 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 Bond Purchase 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 Bond Purchase Agreement, and this Bond Purchase Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.3 This Bond Purchase 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 Bond Purchase Agreement.

7.4 No waiver by any party of any term or condition of this Bond Purchase 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 Bond Purchase Agreement.

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

7.6 By execution and delivery of this Bond Purchase 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 Bond Purchase Agreement shall terminate upon the earlier of:

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

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



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

CITY OF NITRO

(SEAL)

Attest:

By: \_\_\_\_\_  
Its: Mayor  
Date: December 3, 2015

\_\_\_\_\_  
Its: Recorder

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

By: \_\_\_\_\_  
Its: Director  
Date: December 3, 2015

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

Attest:

By: \_\_\_\_\_  
Its: Executive Director  
Date: December 3, 2015

\_\_\_\_\_  
Its: Authorized Officer

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. Renewal and Replacement Fund Deposits	_____	_____	_____	_____

\_\_\_\_\_  
 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 20<sup>th</sup> day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.**

EXHIBIT C

PAYMENT REQUISITION FORM

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

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

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

\_\_\_\_\_  
(Name of Bonds)

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

1. My firm is engineer for the acquisition and construction of \_\_\_\_\_ to the \_\_\_\_\_ system (the "Project") of \_\_\_\_\_ (the "Issuer"), to be constructed primarily in \_\_\_\_\_ County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the bond \_\_\_\_\_ adopted or enacted by the Issuer on \_\_\_\_\_, and the Bond Purchase 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 B attached hereto as Exhibit A, and my firm<sup>1</sup> has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project

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

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 thereof<sup>2</sup>, the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Funding Assistance 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; (xi) the successful bidders have provided the Drug-Free Workplace Affidavit as evidence of the Vendor's compliance with the provisions of Article 1D, Chapter 21 of the West Virginia Code; and (xii) attached hereto as Exhibit A is the final amended "Schedule B - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

4. The Project will serve \_\_\_\_\_ new customers in the \_\_\_\_\_ area.

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

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

[SEAL]

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<sup>2</sup>If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of \_\_\_\_\_ of even date herewith," at the beginning of (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, ground breaking 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. FISCAL SUSTAINABILITY – The Local Government shall submit an acceptable fiscal sustainability plan that complied with Section 603(d)(1)(E) of the Clean Water Act to DEP no later than six months following substantial completion of the Project. This requirement shall be included in the bond closing documents.

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

D. CLOSING REQUIREMENTS – The Closing is contingent on the DEP's receipt of the Final Title Opinion. If the Local Government has not obtained all easements for the emergency work, then no funds can be advanced to pay for the costs of the emergency work until DEP has received a Supplemental Title Opinion regarding the emergency work easements.



EXHIBIT F

MONTHLY PAYMENT FORM

West Virginia Water Development Authority  
1009 Bullitt Street  
Charleston, WV 25301

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 Closing]

West Virginia Water Development Authority  
1009 Bullitt Street  
Charleston, WV 25301

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

Ladies and Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a bond purchase agreement dated \_\_\_\_\_, \_\_\_\_\_, including all schedules and exhibits attached thereto (the "Bond Purchase 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 Bond Purchase Agreement. The Local Bonds are issued in the principal amount of \$ \_\_\_\_\_, in the form of one bond, registered as to principal only to the Authority, with principal 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 Bond Purchase 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 Bond Purchase 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 Bond Purchase 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 Bond Purchase 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 Bond Purchase 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 Bond Purchase Agreement.

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

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

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

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

Very truly yours,

## SCHEDULE X

### DESCRIPTION OF LOCAL BONDS

A.	Series A Bonds (CWSRF Base Program)	
	Principal Amount of Local Bonds	\$679,519
	Purchase Price of Local Bonds	\$679,519

The Local Bonds shall bear interest at a rate of 0.5% per annum. Commencing December 1, 2017, principal of and interest on the Local Bonds is payable quarterly, with an administrative fee of 0.5%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Government shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

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

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

Number of Proposed New Customers to Be Served: 105

Location: Blakes Creek Road and Bailes Drive areas of Nitro, Putnam County

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

- (i) \$4,575,902 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 1996 A, dated December 10, 1996 (the "Series 1996 A Bonds");

- (ii) \$2,050,000 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 2000 A, dated June 28, 2000 (the “Series 2000 A Bonds”);
- (iii) \$543,900 Sewer Revenue Bonds (West Virginia SRF Program), Series 2001 A, dated June 5, 2001 (the “Series 2001 A Bonds”); and
- (iv) \$1,910,778 Sewer Revenue Bonds, (West Virginia SRF Program), Series 2009 A, dated November 12, 2009 (the “Series 2009 A Bonds”).

**SCHEDULE Y**  
**DEBT SERVICE SCHEDULE**

Net Debt Service							
City of Nitro							
CWSRF							
\$679,519							
0.5% Interest Rate							
0.5% Administrative Fee							
Date	Principal	Coupon	Interest	Total Debt Service	Admin Fee	Net Debt Service	
12/1/2017	7,223	0.500%	849.40	8,072.40	437.34	8,509.74	
3/1/2018	7,232	0.500%	840.37	8,072.37	437.34	8,509.71	
6/1/2018	7,241	0.500%	831.33	8,072.33	437.34	8,509.67	
9/1/2018	7,250	0.500%	822.28	8,072.28	437.34	8,509.62	
12/1/2018	7,259	0.500%	813.22	8,072.22	437.34	8,509.56	
3/1/2019	7,268	0.500%	804.14	8,072.14	437.34	8,509.48	
6/1/2019	7,277	0.500%	795.06	8,072.06	437.34	8,509.40	
9/1/2019	7,286	0.500%	785.96	8,071.96	437.34	8,509.30	
12/1/2019	7,296	0.500%	776.85	8,072.85	437.34	8,510.19	
3/1/2020	7,305	0.500%	767.73	8,072.73	437.34	8,510.07	
6/1/2020	7,314	0.500%	758.60	8,072.60	437.34	8,509.94	
9/1/2020	7,323	0.500%	749.46	8,072.46	437.34	8,509.80	
12/1/2020	7,332	0.500%	740.31	8,072.31	437.34	8,509.65	
3/1/2021	7,341	0.500%	731.14	8,072.14	437.34	8,509.48	
6/1/2021	7,350	0.500%	721.97	8,071.97	437.34	8,509.31	
9/1/2021	7,360	0.500%	712.78	8,072.78	437.34	8,510.12	
12/1/2021	7,369	0.500%	703.58	8,072.58	437.34	8,509.92	
3/1/2022	7,378	0.500%	694.37	8,072.37	437.34	8,509.71	
6/1/2022	7,387	0.500%	685.14	8,072.14	437.34	8,509.48	
9/1/2022	7,397	0.500%	675.91	8,072.91	437.34	8,510.25	
12/1/2022	7,406	0.500%	666.66	8,072.66	437.34	8,510.00	
3/1/2023	7,415	0.500%	657.41	8,072.41	437.34	8,509.75	
6/1/2023	7,424	0.500%	648.14	8,072.14	437.34	8,509.48	
9/1/2023	7,434	0.500%	638.86	8,072.86	437.34	8,510.20	
12/1/2023	7,443	0.500%	629.57	8,072.57	437.34	8,509.91	
3/1/2024	7,452	0.500%	620.26	8,072.26	437.34	8,509.60	
6/1/2024	7,461	0.500%	610.95	8,071.95	437.34	8,509.29	
9/1/2024	7,471	0.500%	601.62	8,072.62	437.34	8,509.96	
12/1/2024	7,480	0.500%	592.28	8,072.28	437.34	8,509.62	
3/1/2025	7,489	0.500%	582.93	8,071.93	437.34	8,509.27	
6/1/2025	7,499	0.500%	573.57	8,072.57	437.34	8,509.91	
9/1/2025	7,508	0.500%	564.20	8,072.20	437.34	8,509.54	
12/1/2025	7,518	0.500%	554.81	8,072.81	437.34	8,510.15	
3/1/2026	7,527	0.500%	545.41	8,072.41	437.34	8,509.75	
6/1/2026	7,536	0.500%	536.01	8,072.01	437.34	8,509.35	
9/1/2026	7,546	0.500%	526.59	8,072.59	437.34	8,509.93	
12/1/2026	7,555	0.500%	517.15	8,072.15	437.34	8,509.49	
3/1/2027	7,565	0.500%	507.71	8,072.71	437.34	8,510.05	
6/1/2027	7,574	0.500%	498.25	8,072.25	437.34	8,509.59	
9/1/2027	7,584	0.500%	488.79	8,072.79	437.34	8,510.13	
12/1/2027	7,593	0.500%	479.31	8,072.31	437.34	8,509.65	
3/1/2028	7,603	0.500%	469.81	8,072.81	437.34	8,510.15	
6/1/2028	7,612	0.500%	460.31	8,072.31	437.34	8,509.65	
9/1/2028	7,622	0.500%	450.80	8,072.80	437.34	8,510.14	
12/1/2028	7,631	0.500%	441.27	8,072.27	437.34	8,509.61	
3/1/2029	7,641	0.500%	431.73	8,072.73	437.34	8,510.07	
6/1/2029	7,650	0.500%	422.18	8,072.18	437.34	8,509.52	

Nov 3, 2015 4:11 pm Prepared by Piper Jaffray & Co.

(WDA:LOANS-NITRO115) 4

Net Debt Service							
City of Nitro							
CWSRF							
\$679,519							
0.5% Interest Rate							
0.5% Administrative Fee							
Date	Principal	Coupon	Interest	Total Debt Service	Admin Fee	Net Debt Service	
9/1/2029	7,660	0.500%	412.62	8,072.62	437.34	8,509.96	
12/1/2029	7,669	0.500%	403.04	8,072.04	437.34	8,509.38	
3/1/2030	7,679	0.500%	393.45	8,072.45	437.34	8,509.79	
6/1/2030	7,689	0.500%	383.86	8,072.86	437.34	8,510.20	
9/1/2030	7,698	0.500%	374.24	8,072.24	437.34	8,509.58	
12/1/2030	7,708	0.500%	364.62	8,072.62	437.34	8,509.96	
3/1/2031	7,717	0.500%	354.99	8,071.99	437.34	8,509.33	
6/1/2031	7,727	0.500%	345.34	8,072.34	437.34	8,509.68	
9/1/2031	7,737	0.500%	335.68	8,072.68	437.34	8,510.02	
12/1/2031	7,746	0.500%	326.01	8,072.01	437.34	8,509.35	
3/1/2032	7,756	0.500%	316.33	8,072.33	437.34	8,509.67	
6/1/2032	7,766	0.500%	306.63	8,072.63	437.34	8,509.97	
9/1/2032	7,776	0.500%	296.93	8,072.93	437.34	8,510.27	
12/1/2032	7,785	0.500%	287.21	8,072.21	437.34	8,509.55	
3/1/2033	7,795	0.500%	277.47	8,072.47	437.34	8,509.81	
6/1/2033	7,805	0.500%	267.73	8,072.73	437.34	8,510.07	
9/1/2033	7,814	0.500%	257.97	8,071.97	437.34	8,509.31	
12/1/2033	7,824	0.500%	248.21	8,072.21	437.34	8,509.55	
3/1/2034	7,834	0.500%	238.43	8,072.43	437.34	8,509.77	
6/1/2034	7,844	0.500%	228.63	8,072.63	437.34	8,509.97	
9/1/2034	7,854	0.500%	218.83	8,072.83	437.34	8,510.17	
12/1/2034	7,863	0.500%	209.01	8,072.01	437.34	8,509.35	
3/1/2035	7,873	0.500%	199.18	8,072.18	437.34	8,509.52	
6/1/2035	7,883	0.500%	189.34	8,072.34	437.34	8,509.68	
9/1/2035	7,893	0.500%	179.49	8,072.49	437.34	8,509.83	
12/1/2035	7,903	0.500%	169.62	8,072.62	437.34	8,509.96	
3/1/2036	7,913	0.500%	159.74	8,072.74	437.34	8,510.08	
6/1/2036	7,923	0.500%	149.85	8,072.85	437.34	8,510.19	
9/1/2036	7,932	0.500%	139.95	8,071.95	437.34	8,509.29	
12/1/2036	7,942	0.500%	130.03	8,072.03	437.34	8,509.37	
3/1/2037	7,952	0.500%	120.11	8,072.11	437.34	8,509.45	
6/1/2037	7,962	0.500%	110.17	8,072.17	437.34	8,509.51	
9/1/2037	7,972	0.500%	100.21	8,072.21	437.34	8,509.55	
12/1/2037	7,982	0.500%	90.25	8,072.25	437.34	8,509.59	
3/1/2038	7,992	0.500%	80.27	8,072.27	437.34	8,509.61	
6/1/2038	8,002	0.500%	70.28	8,072.28	437.34	8,509.62	
9/1/2038	8,012	0.500%	60.28	8,072.28	437.34	8,509.62	
12/1/2038	8,022	0.500%	50.26	8,072.26	437.34	8,509.60	
3/1/2039	8,032	0.500%	40.24	8,072.24	437.34	8,509.58	
6/1/2039	8,042	0.500%	30.20	8,072.20	437.34	8,509.54	
9/1/2039	8,052	0.500%	20.14	8,072.14	437.34	8,509.48	
12/1/2039	8,062	0.500%	10.08	8,072.08	437.18	8,509.26	
	679,519		38,923.10	718,442.10	38,923.10	757,365.20	

The quarterly administration fee is calculated based upon 0.5% of the loan payments and will be \$437.34, with a final payment of \$437.18 to total \$38,923.10.

CITY OF NITRO  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

NOTES SUPPLEMENTAL PARAMETERS RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, REDEMPTION PROVISION AND OTHER TERMS OF THE SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015, OF THE CITY OF NITRO; AUTHORIZING AND APPROVING AN INDENTURE, TAX CERTIFICATE, TAX COMPLIANCE POLICY, CONTINUING DISCLOSURE AGREEMENT, CONTINUING DISCLOSURE POLICY, PRELIMINARY OFFICIAL STATEMENT, OFFICIAL STATEMENT AND REGISTRAR AGREEMENT; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH NOTES; DESIGNATING A REGISTRAR, TRUSTEE AND PAYING AGENT; MAKING OTHER PROVISIONS AS TO THE NOTES; APPROVING AND AUTHORIZING PAYMENT OF INVOICES;

WHEREAS, the city council (the "Governing Body") of the City of Nitro (the "Issuer") has duly and officially adopted a Bond and Note Ordinance on October 20, 2015, effective November 17, 2015 (the "Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING SEWERAGE SYSTEM OF THE CITY OF NITRO; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$10,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, FROM TIME TO TIME IN ONE OR MORE SERIES AS DESIGNATED IN SUPPLEMENTAL RESOLUTIONS, OF THE CITY OF NITRO, THE PROCEEDS OF WHICH, SHALL BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF NITRO WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO PERMANENTLY FINANCE THE COST OF SUCH DESIGN, ACQUISITION AND CONSTRUCTION, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$9,000,000 IN



AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM BOND ANTICIPATION NOTES, TO TEMPORARILY FINANCE A PORTION OF THE COST OF SUCH DESIGN, ACQUISITION AND CONSTRUCTION; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AND ADOPTING OTHER PROVISIONS RELATED THERETO.

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

WHEREAS, the Ordinance provides for the issuance of the Sewerage System Bond Anticipation Notes, Series 2015 (the "Notes"), of the Issuer, in the aggregate principal amount of not more than \$9,000,000, all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"); and in the Ordinance it is provided that the exact principal amount, date, maturity date, interest rate, interest and principal payment dates, redemption provision and other terms of the Notes should be established by a Supplemental Resolution thereto and that other matters relating to the Notes be therein provided for;

WHEREAS, the Notes are proposed to be purchased by the Crews & Associates, Inc. (the "Original Purchaser");

WHEREAS, the Notes are proposed to be purchased pursuant to a Note Purchase Agreement between the Original Purchaser and the Issuer, to be dated the date of execution thereof and in general form attached hereto and incorporated herein by reference (the "Purchase Agreement");

WHEREAS, in order to issue the Notes it is necessary to appoint a Registrar, Paying Agent and Trustee, and approve a Note Purchase Agreement, a Continuing Disclosure Agreement, an Indenture, a Registrar Agreement, a Preliminary Official Statement and an Official Statement and other matters pertaining to the Notes;

WHEREAS, the Governing Body has determined that the Mayor shall be empowered and authorized to execute the Purchase Agreement, within the parameters set forth herein, at such time as such person shall determine most advantageous to the District; and

WHEREAS, the Governing Body deems it essential and desirable that this Resolution be adopted, that the Purchase Agreement, the Continuing Disclosure Agreement, the Indenture and the Registrar Agreement hereinafter provided for be entered into by the Issuer, that the Official Statement relating to the Notes, hereinafter described, be approved, that the Issuer's Mayor be authorized to enter into the Purchase Agreement within the parameters hereby approved by the Governing Body, and that other matters relating to the Notes be herein provided for all in accordance with the Ordinance.

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

Section 1. A. Pursuant to the Ordinance and the Act, this Notes Supplemental Parameters Resolution is adopted and there are hereby authorized and ordered to be issued the Notes. The Notes shall be issued in the aggregate principal amount not to exceed \$7,000,000, bear interest at a rate not to exceed 3%, payable semiannually on each January 1 and July 1, commencing July 1, 2016, as determined by the Certificate of Determinations and shall mature no later than January 1, 2019, all as shall subsequently be approved by the Mayor pursuant to the execution and delivery by the Mayor of a Certificate of Determinations with respect to the Notes, dated the date of the Note Purchase Agreement, the form of which is attached hereto as EXHIBIT A and approved hereby (the "Notes Certificate of Determinations"); provided however, that the specific terms of the Notes shall be as determined by the Mayor at the time of the execution of the Note Purchase Agreement and as approved by the Mayor in the Certificate of Determinations.

B. Proceeds of the Notes shall be deposited in the Notes Construction Trust Fund created in the Indenture and applied to the costs of the Project and the costs of issuance of the Notes. The Utility Board is hereby authorized to review and approve the costs of the Project.

C. The principal of the Notes shall be payable in lawful money of the United States of America at the address of the Noteholder set forth in the Note Register, with the final payment to be made only upon delivery of the Notes to the Registrar for cancellation. Payment of interest on any Notes shall be made on each Interest Payment Date to the Noteholder at the close of business on the Regular Record Date for such Interest Payment Date by check or draft mailed to the person who is the registered owner of such Notes and at the address appearing on the Note Register at the close of business on the Regular Record Date pertaining to such Interest Payment Date, or at the option of any Registered Owner of \$1,000,000 or more of the Series 2015 Notes, by wire transfer to a domestic bank account specified in writing at least 5 days prior to the Record Date by such Registered Owner. If and to the extent the Issuer shall default in the payment or provision for payment of interest on any Notes on any Interest Payment Date, such interest in default shall cease to be payable to the person who was the registered owner of such Notes as of the Regular Record Date. Whenever moneys become available for the payment of such defaulted interest, the Registrar shall establish a Special Record Date for the payment of such defaulted interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment, and the Registrar shall cause notice of the proposed payment and of such Special Record Date to be mailed by first class mail, postage prepaid, to the Noteholder at its address as it appears on the Note Register not less than 10 days prior to such Special Record Date. Such notice having been so mailed, the defaulted interest shall be payable to the persons who are the registered owners of the Notes (or their respective predecessor Notes) at the close of business on such Special Record Date.

D. The Notes are to be paid from the proceeds of bonds to be issued, from time to time, to the Authority at the direction of the DEP. The Issuer commits to take all actions necessary to issue the bonds, from time to time, to timely provide funds to pay the Notes as they become due and payable. In the event that funds are not available from the Authority through the CWSRF to purchase the bonds, the Issuer commits to issue bonds to another lender to provide funds to pay the Notes. The Issuer hereby commits that it will not issue any bonds

payable from the Net Revenue of the System, except for the bonds to pay the Notes, until the Notes are paid in full.

Section 2. The Note Purchase Agreement by and between the Original Purchaser and the Issuer, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved, and directed. The Mayor shall execute and deliver the Note Purchase Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Note Purchase Agreement by the Mayor shall be conclusive evidence of any approval required by this Section, and authorization of any action required by the Note Purchase Agreement relating to the issuance and sale of the Notes, including the payment of all necessary fees and expenses in connection therewith.

Section 3. A. The Notes shall be secured by a trust indenture (the "Indenture") to be entered into between the Issuer and The Huntington National Bank, as Trustee, the form of which is attached hereto as EXHIBIT B and approved hereby. The Mayor shall execute and deliver the Indenture with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Indenture by the Mayor shall be conclusive evidence of any approval required by this Section.

B. The Trustee is hereby authorized to pay the Costs of Issuance of the Notes from the Costs of Issuance Fund created under the Indenture. The Mayor is hereby authorized to submit a requisition to the Trustee evidencing the Costs of Issuance.

Section 4. A. The Tax Certificate, to be dated the date of execution and delivery of the Notes (the "Tax Certificate"), and executed and delivered by the Issuer, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Tax Certificate with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Tax Certificate by the Mayor shall be conclusive evidence of any approval required by this Section.

B. The Tax Compliance Policy adopted on September 17, 2013, is hereby replaced by the Tax Compliance Policy attached hereto as EXHIBIT C and incorporated herein by reference. The Issuer hereby approves the replacement Tax Compliance Policy.

Section 5. A. The Continuing Disclosure Agreement, to be dated the date of execution and delivery of the Notes (the "Disclosure Agreement"), by and between the Issuer and the Dissemination Agent named therein, substantially in the form included in the Official Statement to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Disclosure Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Disclosure Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

B. The Issuer hereby approves the Continuing Disclosure Policy attached hereto as EXHIBIT D and incorporated herein by reference.

Section 6. The distribution by the Original Purchaser of a preliminary official statement (the "Preliminary Official Statement") attached hereto as EXHIBIT E and (which is a "deemed final" official statement in accordance with SEC Rule 15c2-12), substantially in the form submitted to this meeting is hereby ratified and approved. The certificate of the Issuer relating to compliance with SEC Rule 15c2-12 and the execution and delivery thereof by the Mayor is hereby approved. The official statement (the "Official Statement") to be substantially in the form of the Preliminary Official Statement, (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the Mayor) and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The Mayor shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved. The execution of the Official Statement by the Mayor shall be conclusive evidence of any approval required by this Section.

Section 7. The Registrar Agreement by and between the Issuer and the Registrar designated herein, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Registrar Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Registrar Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

Section 8. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia, as the Paying Agent for the Notes.

Section 9. The Issuer hereby appoints and designates The Huntington National Bank, Charleston, West Virginia, as the Trustee and Registrar for the Notes.

Section 10. 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 Notes to the end that the Notes may be delivered on a timely basis to the Original Purchaser pursuant to the Purchase Agreement, including a DTC Letter of Representations. The Mayor is hereby authorized to execute the DTC Blanket Letter of Representations and file it with the DTC.

Section 11. The notice addresses for the Paying Agent, Trustee, Registrar and Original Purchaser shall be as follows:

PAYING AGENT  
West Virginia Municipal Bond Commission  
900 Pennsylvania Avenue, Suite 1117  
Charleston, West Virginia 25301  
Attention: Executive Director

TRUSTEE AND REGISTRAR  
The Huntington National Bank  
3805 Edward Road Suite 350  
CN03  
Cincinnati, OH 45209  
ATTN: Corporate Trust Department

ORIGINAL PURCHASER  
Crews & Associates, Inc.  
300 Summers Street, Suite 930  
Charleston, West Virginia 25301-1631

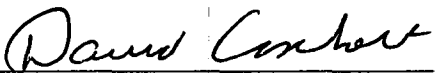
Section 12. The issuance of the Notes is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 13. The Issuer hereby covenants and agrees that it will not permit at any time or times any of the proceeds of the Notes or any other funds of the Issuer to be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any of the Notes to be an “arbitrage bond” as defined in Section 148 of the Code, and the regulations promulgated pursuant thereto. The Mayor of the Issuer is authorized and directed to execute and deliver such further instruments or agreements as shall be required to provide further assurances of the Issuer's compliance with this covenant.

Section 14. The Issuer hereby designates the Notes as “qualified tax-exempt obligations” for purposes of Section 265(b)(3)(B) of the Code and covenants that the Notes do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income tax purposes (excluding, however, obligations issued to currently refund any obligation of the Issuer to the extent the amount of the refunding obligation does not exceed the amount of the refunded obligation and private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code), have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 2015, all as determined in accordance with the Code.

Section 15. The Mayor and Recorder, and all other appropriate officers and employees of the Issuer are hereby authorized, empowered and directed to do any and all things proper and necessary to cause the Notes to be duly and properly issued by the Issuer and delivered to the Original Purchaser as herein authorized and to otherwise facilitate the transaction contemplated by this Notes Supplemental Parameters Resolution, and no further authority shall be necessary to authorize any such officers or employees to give such further assurance and do such further acts as may be legally required.

Adopted this 17<sup>th</sup> day of November, 2015.

  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the City of Nitro on the 17<sup>th</sup> day of November, 2015.

Dated: December 3, 2015.

[SEAL]

A handwritten signature in cursive script that reads "Rita Cox". The signature is written in black ink and is positioned above a horizontal line.

Recorder

**EXHIBIT A**

**City of Nitro  
Sewerage System Bond Anticipation Notes, Series 2015**

**CERTIFICATE OF DETERMINATIONS**

The undersigned, \_\_\_\_\_, Mayor of the City of Nitro (the "Issuer"), in accordance with the Notes Supplemental Parameters Resolution adopted by the City Council of the Issuer on November 17, 2015 (the "Supplemental Parameters Resolution"), with respect to the Issuer's Sewerage System Bond Anticipation Notes, Series 2015 (the "Notes"), hereby finds and determines as follows:

1. The Notes shall be dated December \_\_, 2015 and shall bear interest payable on January 1 and July 1 of each year commencing July 1, 2016.

2. The Notes shall be issued in the aggregate principal amount of \$ \_\_\_\_\_, at a true interest cost of \_\_\_\_%. Such interest rates do not exceed 3.00%, being the maximum interest rate authorized by the Supplemental Parameters Resolution.

3. The Notes shall mature in the amounts and on the dates set forth on Schedule 1 attached hereto and incorporated herein.

4. The Notes shall bear interest at the rates and produce the yields set forth on Schedule 1 attached hereto and incorporated herein.

5. The Notes shall be sold to Crews & Associates, Inc., Charleston, West Virginia (the "Underwriter"), pursuant to the terms of the Note Purchase Agreement by and between the Underwriter and the Issuer, the final form of which is hereby approved, at an aggregate purchase price of \$ \_\_\_\_\_ (representing par value less an Underwriter's discount of \$ \_\_\_\_\_ and [a net original issue premium of \$ \_\_\_\_\_]), (the "Closing Date").

6. The forms of the Official Statement, the Continuing Disclosure Agreement, Indenture and the Registrar Agreement attached hereto under Exhibit A are hereby approved.

The undersigned hereby certifies that the foregoing terms and conditions of the Notes are within the parameters prescribed by the Supplemental Parameters Resolution, and the Notes may be issued with such terms and conditions as authorized by the Supplemental Parameters Resolution.



WITNESS my signature this \_\_ day of November, 2015.

CITY OF NITRO

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

Schedule 1

Maturity Schedule

SERIES 2015 NOTE TERMS

Note No.	Maturity Date	Principal Amount	Interest Rate	Price or Yield
NR-1	1/1/2017	\$2,000,000		
NR-2	1/1/2018	\$2,000,000		
NR-3	1/1/2019	\$ _____ *		

\*Estimate, subject to change.

**EXHIBIT B**  
**TRUST INDENTURE**

See Notes Trust Indenture (Tab No. 16)

## **EXHIBIT C**

### **TAX COMPLIANCE POLICY**

#### **City of Nitro, West Virginia Post-Issuance Tax Compliance Procedures For Tax-Exempt Bonds**

**November 17, 2015**

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt bonds (the “Bonds”) issued by the City of Nitro, West Virginia (the “City”) so as to maximize the likelihood that all applicable post-issuance requirements of the applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations promulgated thereunder (“Treasury Regulations”) needed to preserve the tax-exempt status of the Bonds are met. This Policy establishes a permanent, ongoing structure of practices and procedures that will facilitate compliance with the requirements to maintain the tax-exempt status of individual debt obligations.

The City reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The City also reserves the right to change these policies and procedures from time to time.

#### **General**

Inasmuch as the City is an issuer of Bonds (including refunding Bonds) for governmental purposes or is a responsible conduit issuer authorizing the issuance of 501(c)(3) Bonds or Bonds (including refunding Bonds) for certain “exempt facilities” (e.g., solid waste disposal facilities, sewage facilities, water furnishing facilities, etc.), the City now identifies post-issuance tax compliance procedures for all Bonds authorized by the City. These post-issuance tax compliance procedures set forth the procedures for the City for all Bonds issued by the City and, in the case of Bonds for which the City is a conduit issuer, the City’s requirements of all entities receiving the benefit of the Bond issue (whether through a loan, a lease or otherwise, the “Borrower”), concerning these procedures. All Borrowers shall cause satisfactory policies and procedures to be put in place. Attachment A provides a sample of what the City deems satisfactory.

#### **Post-Issuance Compliance Requirements**

##### **External Advisors / Documentation**

The City and the Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status. Those requirements and procedures shall be documented in the tax certificate or tax regulatory agreement (the “Tax Certificate”) and/or other documents finalized at or before issuance of the Bonds. Those requirements and procedures shall include future compliance with

applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds.

The City and the Borrower also shall engage bond counsel and other legal counsel and advisors, as needed, for consultation following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with any potential changes in use of Bond-financed or refinanced assets.

When necessary, the City shall engage and shall encourage or require any Borrower to engage expert advisors (each a "Rebate Service Provider") to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds in the manner more fully set forth in the Model Borrower Procedures (Attachment A hereto).

Unless otherwise provided by the indenture relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or other financial institution, and the investment of Bond proceeds shall be managed by the City or, in the event the City is the conduit issuer of the Bonds, the Borrower. The City or, in the event the City is the conduit issuer of the Bonds, the Borrower shall prepare (or cause the trustee to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statement shall be delivered to the City if it so requests.

#### Compliance Officer

The [Clerk] [Treasurer] [Business Manager] [Finance Director][Administrator] (the "Compliance Officer") shall be responsible for monitoring post-issuance compliance issues. The Compliance Officer will coordinate procedures for record retention and review of such records. All documents and other records relating to tax-exempt obligation issued by the City shall be maintained by or at the direction of the Compliance Officer. In maintaining such documents and records, the Compliance Officer will comply with applicable Internal Revenue Service ("IRS") requirements, such as those contained in Revenue Procedure 97-22.D. The Compliance Officer shall be aware of options for voluntary corrections for failure to comply with post-issuance compliance requirements (such as remedial actions under Section 1.141-12 of the Regulations and the Treasury's Tax-Exempt Bonds Voluntary Closing Agreement Program) and take such corrective action when necessary and appropriate. The Compliance Officer will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.

The City or, in the event the City is the conduit issuer of the Bonds, the Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to undertake the tasks listed above. The City shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

All relevant records and contracts shall be maintained as described below.

## Arbitrage Rebate and Yield

The City or, in the event the City is a conduit issuer of the Bonds, the Borrower shall be responsible for compliance with all requirements under Federal arbitrage regulations. The City or, as more fully set forth in the Model Borrower Procedures, if applicable, the Borrower is responsible for the following:

- A. Determining the likelihood of complying with an arbitrage rebate exemption;
- B. If necessary, (i) engaging the services of a Rebate Service Provider, (ii) prior to each rebate calculation date, causing the trustee to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider, and (iii) if necessary, contributing, or causing the trustee to contribute any required annual payments into any rebate fund;
- C. Providing to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
- D. Monitoring efforts of the Rebate Service Provider;
- E. Assuring payment of required rebate mounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed or matures;
- F. During the construction period of each capital project financed in whole or in part by Bonds, monitoring the investment and expenditure of Bond proceeds and consulting with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months or 18 months, as applicable, following the issue date of the Bonds; and
- G. Retaining copies of all arbitrage reports and trustee statements as described below under "Record Keeping Requirements" and, upon request, providing such copies to the City.

The City or, in the event the City is the conduit issuer of the Bonds, the Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to undertake the tasks listed above. The Borrower shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

For the Purposes of Complying with the Code's arbitrage restrictions, the Compliance Officer will:

- A. Confirm that a certification of the initial offering prices of the tax-exempt obligations with such supporting data, if any, required by bond counsel, is included in the closing documents for the issue.
- B. Confirm that a computation of the yield on such issue from the Issuer's financial advisor or bond counsel (or an outside arbitrage rebate specialist) is contained in the closing documents.

C. Coordinate the tracking of expenditures, including the expenditure of any investment earnings. If the project(s) to be financed with the proceeds of tax-exempt obligations will be funded with multiple sources of funds, confirm that the Issuer has adopted an accounting methodology that maintains each source of financing separately and monitors the actual expenditure of proceeds of such tax-exempt obligations.

D. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures. This procedure shall include an examination of the expenditures made with proceeds of the tax-exempt obligations within 18 months after each project financed by tax-exempt obligations is placed in service and, if necessary, a reallocation of expenditures in accordance with Section 1.148-6(d) of the Treasury Regulations.

E. Monitor compliance with the applicable “temporary period” (as defined in the Code and Treasury Regulations) exceptions for the expenditure of proceeds of the issue, and provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.

F. Ensure that investments acquired with proceeds of such issue are purchased at fair market value. In determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used.

G. Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.

H. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.

I. Identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.

J. Monitor compliance with six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.

K. Procure a timely computation of any rebate liability and, if rebate is due, to file a Form 8038-T and to arrange for payment of such rebate liability.

L. Arrange for timely computation and payment of “yield reduction payments” (as such term is defined in the Code and Treasury Regulations), if applicable.

#### Use of Bond Proceeds and Bond-Financed or Refinanced Assets

The City or, in the event the City is a conduit issuer of the Bonds, the Borrower shall be responsible for monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of

the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

A. Maintaining records identifying the assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before bond issuance), including a final allocation of Bond proceeds as described below under "Record Keeping Requirements";

B. Consulting with bond counsel and other legal counsel and advisers in the review of any change in use of Bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

C. Conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

D. To the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified Bonds, if such counsel advises that a remedial action is necessary;

E. When required, to the extent that Bond proceeds were used to acquire an existing building, confirming that qualified rehabilitation expenditures in an amount equal to at least 15% of the amount of such proceeds were made no later than 24 months after the later of (1) the date of issuance of the Bonds, or (2) the date of acquisition of the building;

F. When required, confirming that less than 25% of Bond proceeds were used to acquire land;

G. With respect to facilities that dispose of solid waste by reconstituting, converting or otherwise recycling it into material that is not waste, determining annually whether solid waste (as identified or described at the time of issuance of the Bonds) constitutes at least 65%, by weight or volume, of the total materials introduced into the reconstituting, converting or recycling process. This provision is subject to amendment or deletion depending on the content of any new regulations promulgated by the United States Treasury regarding the definition of solid-waste disposal facilities; and

H. With respect to other types of exempt facilities, adopting any such procedures that bond counsel deems appropriate to periodically assess whether such facility continues to qualify as an exempt facility.

### **Private Activity Concerns**

The following polices relate to the monitoring and tracking of private uses and private payments with respect to facilities financed with the Obligations. The Compliance Officer will:



A. Maintain records determining and tracking facilities financed with tax-exempt obligations and the amount of proceeds spent on each facility.

B. Maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of an issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.

C. Monitor private use of financed facilities to ensure compliance with applicable limitations on such use. Examples of potential private use include:

1. Sale of the facilities, including sale of capacity rights;
2. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;
3. Management contracts (in which the Issuer authorizes a third party to operate a facility, e.g., cafeteria) and research contracts;
4. Preference arrangements (in which the Issuer permits a third party preference, such as parking in a public parking lot);
5. Output contracts or other contracts for use of utility facilities (including contracts with large utility users);
6. Development agreements which provide for guaranteed payments or property values from a develop

#### Record Keeping Requirement

The City or, in the event the City is a conduit issuer of the Bonds, the Borrower shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least 3 years:

A. A copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Bonds;

B. A copy of all material documents relating to capital expenditures financed or refinanced by Bond process, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds and the final completion report filed pursuant to the loan agreement, lease or similar document; and

C. A copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statement, in connection with any investment agreements, and copies of all bidding documents, if any.

The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to retain the records listed above. The Borrower shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

Reissuance

The Compliance Officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance for federal tax purposes.

## Attachment A

### **SAMPLE City of Nitro, West Virginia Borrower Post-Issuance Tax Compliance Procedures For Tax-Exempt Bonds**

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt bonds (the “Bonds”) issued on behalf of \_\_\_\_\_ (the “Borrower”) so as to maximize the likelihood that all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds are met. The Borrower reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant provided, any exceptions to these procedures shall not be made without engaging bond counsel or other legal counsel for consultation for a determination that such exception would not cause the Bonds to lose their tax-exempt status and notification to the City of such exception. The Borrower also reserves the right to change these policies and procedures from time to time. The Borrower shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

#### **General**

The Borrower now identifies post-issuance tax compliance procedures for all Bonds issued on its behalf.

#### **Post-Issuance Compliance Requirements**

##### External Advisors / Documentation

The Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status. The Borrower also shall engage bond counsel and other legal counsel and advisors, as needed, for consultation following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with any potential changes in use of Bond-financed or refinanced assets.

The Borrower shall be responsible for determining (or obtain expert advice to determine) whether arbitrage rebate calculations have to be made for the Bond issue. If it is determined that such calculations are or are likely to be required, the Borrower shall engage expert advisors (each a “Rebate Service Provider”) to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds, or else shall ensure that it has adequate financial, accounting and legal resources of its own to make such calculations, Borrower shall make any rebate payments required on a timely basis.

Unless otherwise provided by the indenture relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or other financial institution, and the investment of Bond proceeds shall be managed by the Borrower. The Borrower shall prepare (or cause the trustee or other financial institution to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statements shall be delivered to the bond issuer if it so requests.

#### Arbitrage Rebate and Yield

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for overseeing compliance with arbitrage rebate requirements under federal tax regulations:

1) If at the time of Bond Issuance, based on reasonable expectations set forth in the Tax Certificate or Tax Regulatory Agreement (the "Tax Certificate"), it appears likely that the Bond issue will qualify for an exemption from the rebate requirement, the Borrower may defer taking any of the actions set forth in the subsection (2). Not later than the time of completion of construction or acquisition of the Bond-financed project, and depletion of all funds from the project fund, the Borrower shall make a determination if expenditure of the Bond proceeds qualified for exemption from the rebate requirements based on spending within a 6-month or 18-month period after issuance. If rebate exemption is determined to be applicable, Borrower shall prepare and keep in the permanent records of the Bond issue a memorandum evidencing this conclusion together with records of expenditure to support such conclusion. If the transaction does not qualify for rebate exemption, Borrower shall initiate the steps set forth in (2) below.

2) If at the time of Bond issuance it appears likely that arbitrage rebate calculations will be required, or upon determination that calculations are required pursuant to (1) above, Borrower shall:

- if necessary, (i) engage the services of a Rebate Service Provider, (ii) prior to each rebate calculation date, cause the trustee or other financial institution investing bond proceeds to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider, and (iii) if necessary, contributing, or causing the trustee to contribute any required annual payments into any rebate fund;
- provide to the Rebate Service Provider additional documents and information reasonable requested by the Rebate Service Provider;
- monitor efforts of the Rebate Service Provider;
- assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed or matures;

- during the construction period of each capital project financed in whole or in part by Bonds, monitor the investment and expenditure of Bond proceeds and consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months, as applicable, following the issue date of the Bonds;
- retain copies of all arbitrage reports and trustee statements as described below under “Record Keeping Requirements” and, upon request, providing such copies to the Bond issuer; and
- in lieu of engaging an outside Rebate Service Provider, the Borrower may make a determination that it has sufficient capabilities using its own personnel, supported by its regular accounting and legal advisers, to be able to make the required rebate calculations. Such determination shall be evidenced in writing with specific reference to the personnel and advisers to carry out the calculations, and such written determination shall be maintained in the records of the Bond transaction.

Use of Bond Proceeds and Bond-Financed or Refinanced Assets:

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for:

- monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before Bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before Bond issuance), including a final allocation of Bond proceeds as described below under “Record Keeping Requirements”;
- consulting at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- to the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced

assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified Bonds, if such counsel advises that a remedial action is necessary;

- when required, to the extent that Bond proceeds were used to acquire an existing building, confirming that qualified rehabilitation expenditures in an amount equal to at least 15% of the amount of such proceeds were made no later than 24 months after the later of (1) the date of issuance of the Bonds, or (2) the date of acquisition of the building;
- when required, confirming that less than 25% of Bond proceeds were used to acquire land; and
- [with respect to facilities that dispose of solid waste by reconstituting, converting or otherwise recycling it into material that is not waste, determining annually whether solid waste (as identified or described at the time of issuance of the Bonds) constitutes at least 65%, by weight or volume, of the total materials introduced into the reconstituting, converting or recycling process. This provision is subject to amendment or deletion depending on the content of any new regulations promulgated by the United States Treasury regarding the definition of solid-waste disposal facilities;]

All relevant records and contracts shall be maintained as described below.

#### Record Keeping Requirement

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least 3 years:

- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Bonds;
- a copy of all material documents relating to capital expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds and the Final Completion Report filed pursuant to the Loan Agreement; and
- a copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any.

DATED: \_\_\_\_\_

[BORROWER]

By \_\_\_\_\_  
[Title]

**EXHIBIT D**

**CONTINUING DISCLOSURE POLICY**

**CITY OF NITRO, WEST VIRGINIA  
CONTINUING DISCLOSURE COMPLIANCE PROCEDURES**

ARTICLE I	–	DEFINITIONS AND RULES OF CONSTRUCTION .....	1
Section 1.		Definitions .....	1
Section 2.		Rules of Construction .....	3
ARTICLE II	–	GENERAL PRINCIPLES .....	3
ARTICLE III	–	DISCLOSURE MANAGER AND DISCLOSURE COORDINATOR .....	3
Section 1.		Appointment of Disclosure Manager.....	3
Section 2.		Duties of the Disclosure Manager .....	3
Section 3.		Appointment of Disclosure Coordinator.....	4
Section 4.		Duties of the Disclosure Coordinator .....	4
ARTICLE IV	–	LISTED EVENTS REQUIREMENTS .....	5
Section 1.		General.....	5
Section 2.		Listed Events for Bonds Issued Prior to December 1, 2010.....	5
Section 3.		Listed Events for Bonds Issued on and after December 1, 2010.....	5
ARTICLE V	–	ANNUAL REPORT REQUIREMENTS .....	6
ARTICLE VI	–	FILING AND NOTICE REQUIREMENTS .....	7
Section 1.		Annual Reports and Event Notices.....	7
Section 2.		Required Notices .....	7
ARTICLE VII	–	VOLUNTARY DISCLOSURES.....	7
ARTICLE VIII	–	DOCUMENT RETENTION POLICY .....	7
Exhibit A:		Rule 15c2-12 (As Amended).....	A-1
Exhibit B:		City and Outstanding Debt .....	B-1
Exhibit C:		Rating History for City Outstanding Debt.....	C-1
Exhibit D:		Required Information for Annual Reports for City .....	D-1
Exhibit E:		Required Notices .....	E-1



## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

#### Section 1. Definitions.

The following capitalized terms shall have the following meanings in these Procedures:

“Annual Report” shall mean any annual report to be filed by the City in connection with its obligations under any Continuing Disclosure Certificate executed in accordance with Rule 15c2-12 under the Securities Exchange Act of 1934.

“City” shall mean the City of Nitro, West Virginia, its successors and assigns.

“City Counsel” shall mean the counsel appointed to serve the City.

“Bonds” shall mean any bonds, certificates of participation, notes or any other evidence of indebtedness issued by or on behalf of the City which is subject to Rule 15c2-12 as listed on Exhibit B attached hereto.

“Bond Insurer” shall mean an issuer of a financial guaranty insurance or municipal bond insurance policy guaranteeing the scheduled payment of principal of and interest on an outstanding issue of Bonds when due.

“Continuing Disclosure Certificate” shall mean each continuing disclosure certificate, undertaking or agreement executed and delivered by the City in connection with an issue of Bonds.

“Credit Facility Provider” shall mean a bank providing a direct-pay letter of credit or other security or liquidity instrument in connection with an issue of Bonds which secures the payment of the principal or purchase price, if any, of and interest on an outstanding issue of Bonds when due.

“Disclosure Coordinator” shall mean the person or persons designated by the Disclosure Manager to assist him in taking such action necessary or desirable to comply with the terms of the Continuing Disclosure Certificates, as provided in Article III hereof.

“Disclosure Counsel” shall mean a firm of nationally recognized standing in matters pertaining to the disclosure obligations under Rule 15c2-12 of the Securities and Exchange Commission of the United States of America, duly admitted to the practice of law before the highest court of any state of the United States of America.

“Disclosure Manager” shall mean the person appointed by the City who is responsible for compliance with the terms of the Continuing Disclosure Certificates, as provided in Article III.

“EMMA” shall mean the MSRB’s Electronic Municipal Market Access system or any other successor thereto as designated by the SEC or the MSRB.

“Event Notice” shall mean any notice of the occurrence of a Material Event or Listed Event.

“Listed Event” shall mean any event described in Section 3 of Article IV hereof.

“Material Event” shall mean any event described in Section 2 of Article IV hereof.

“MSRB” shall mean Municipal Securities Rulemaking Board.

“Official Statement” shall mean any Preliminary Official Statement, final Official Statement or any other disclosure document that the City prepared in connection with the issuance and sale of any Bonds.

“Paying Agent” shall mean shall mean any bank, trust company, banking association or financial institution appointed to perform the functions of a paying agent for an issue of Bonds.

“Procedures” shall mean these Continuing Disclosure Procedures.

“Rating Agency” shall mean each of Moody’s Investor’s Service, Standard & Poor’s Rating Services, a Standard & Poor’s Financial Services LLC business, and Fitch Ratings Inc.

“Rule 15c2-12” shall mean Rule 15c2-12(b)(5) adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

“Trustee” shall mean the bank, trust company, national banking association or other financial institution appointed as a trustee for an issue of Bonds.

Section 2. **Rules of Construction.** The singular form of any word used herein, including the terms defined in this Section II, shall mean and include the plural number and vice versa, unless the context otherwise requires. Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders. The headings or titles of the several Articles and Sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof. The Material Events listed in Section 2 of Article IV hereof and the Listed Events listed in Section 3 of Article IV hereof are referred to herein as “Listed Events”. Each Exhibit shall be amended or supplemented from time to time as Bonds mature or are redeemed and as Bonds that are subject to Rule 15c2-12 are issued. Reference to each Exhibit hereto shall refer to such Exhibit as it may be so amended and supplemented.

## ARTICLE II

### GENERAL PRINCIPLES

The City is committed to complete and accurate market disclosure in accordance with the disclosure requirements under the federal securities laws, including rules and regulations promulgated by the SEC and the MSRB, as those rules may be amended from time to time. These Procedures are approved by the City in order to achieve this objective and, in accordance therewith, may be amended and supplemented by the City from time to time. These Procedures shall be revised from time to time as necessary or desirable as Bonds mature or are redeemed and as Bonds that are subject to Rule 15c2-12 are issued.

## ARTICLE III

### DISCLOSURE MANAGER AND DISCLOSURE COORDINATOR

Section 1. **Appointment of Disclosure Manager.** The City shall appoint a Disclosure Manager to fulfill the duties set forth in Section 2 of this Article III.

Section 2. **Duties of the Disclosure Manager.**

The Disclosure Manager shall:

- (i) monitor and maintain compliance by the City with its respective Continuing Disclosure Certificates and these Procedures;
- (ii) serve as the main contact for each Disclosure Coordinator to communicate issues and information that may be included in an Event Notice or an Annual Report;
- (iii) review all proposed Listed Event Notices, Annual Reports and other filings with the EMMA system and filings for Bond Insurers, Credit Facility Providers, Paying Agents, Rating Agencies, and Trustees;
- (iv) confer with City Counsel and Disclosure Counsel regarding the City's continuing disclosure undertakings and procedures;
- (v) maintain the lists attached as Exhibits B, C, D, E and F;
- (vi) direct the Disclosure Coordinator to file any required documents; and
- (vii) take such other action as may be necessary or useful to achieve the objectives of these Procedures and to comply with all applicable federal securities laws.

**Section 3. Appointment of Disclosure Coordinator.**

The Disclosure Manager shall appoint one or more Disclosure Coordinators from time to time to fulfill the duties set forth in Section 4 of this Article III. The Disclosure Coordinators may work with other employees of the City in order to effectively comply with the objectives of these Procedures.

**Section 4. Duties of the Disclosure Coordinator.**

(A) The Disclosure Coordinator shall:

- (i) file any documents as directed by the Disclosure Manager;
- (ii) serve as a contact for City staff to communicate issues and information that may be included in an Event Notice or an Annual Report;
- (iii) maintain correspondence regarding possible Listed Events;
- (iv) keep informed regarding all of the City's public disclosures, including disclosures to the Bond Insurers, the Credit Facility Providers, the Rating Agencies, and the Trustees;
- (v) document the City's continuing disclosure filings by retaining the documents set forth in Article VIII hereof; and
- (vi) take such other action as may be necessary or useful to achieve the objectives of these Procedures and to comply with all applicable federal securities laws.

(B) In addition to the duties set forth above in clause (A), the Disclosure Coordinator shall review the list of Listed Events regularly to determine whether an event has occurred that may require a filing of an Event Notice. The Disclosure Coordinator shall regularly check the websites of and subscribe to communications (e.g., news alerts, press releases, etc.) from each Rating Agency, Bond Insurer or Credit Facility Provider in order to be aware of any Rating Change as described in the Continuing Disclosure Certificates. The Disclosure Coordinator shall contact relevant City staff on a regular basis to

ascertain whether any events have occurred which would constitute Listed Events under the Continuing Disclosure Certificates.

## ARTICLE IV

### LISTED EVENTS REQUIREMENTS

#### Section 1. General.

The Continuing Disclosure Certificates entered into by the City with respect to Bonds issued prior to December 1, 2010 require Event Notices to be filed upon the occurrence of any event listed in Section 2 of Article IV hereof, if material. Any such Event Notice shall be filed "in a timely manner". The Continuing Disclosure Certificates entered into by the City with respect to Bonds issued on or after December 1, 2010 require Event Notices to be filed upon the occurrence of any event listed in Section 3 of Article IV hereof no later than 10 business days after the occurrence of such Listed Event.

#### Section 2. Listed Events for Bonds Issued Prior to December 1, 2010.

For Bonds issued prior to December 1, 2010, pursuant to the provisions of the applicable Continuing Disclosure Certificate, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the outstanding obligation, if material, in a timely manner:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on any credit enhancements reflecting financial difficulties;
- (v) substitution of any credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions or events affecting the tax-exempt status of the securities;
- (vii) modifications to the rights of security holders;
- (viii) bond calls;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the securities; and
- (xi) rating changes.

#### Section 3. Listed Events for Bonds Issued on and after December 1, 2010.

For Bonds issued on or after to December 1, 2010, pursuant to the provisions of the applicable Continuing Disclosure Certificate, the City shall give, or cause to be given, notice of the occurrence of any of the following Listed Events within ten (10) business days of the occurrence thereof:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;

- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (vii) modifications to rights of security holders, if material;
- (viii) bond calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the securities, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership or similar event of the obligated person (Note: For the purposes of this event, the event is considered to occur when any of the following occur: The appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental City has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental City, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental City having supervision or jurisdiction over substantially all of the assets or business of the obligated person);
- (xiii) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material.

## ARTICLE V

### ANNUAL REPORT REQUIREMENTS

Pursuant to the various Continuing Disclosure Certificates, the City must provide its respective Annual Report with respect to an issue of Bonds by the date set forth in Exhibit D attached hereto. The Disclosure Coordinator shall commence collection of information for each Annual Report at such time as he determines necessary or useful in order to timely complete and file the Annual Report. The Disclosure Coordinator shall obtain any information necessary to be included in an Annual Report that is not included in the City's audited financial statements. The Annual Report shall include the financial

information and other operating data set forth in the respective Continuing Disclosure Certificate as summarized in Exhibit D attached hereto.

In accordance with the Continuing Disclosure Certificates, if audited financial statements are not available by the date the Annual Report is required to be filed, unaudited financial statements are to be included in such Annual Reports and audited financial statements shall be filed when such statements become available. In addition, the Continuing Disclosure Certificates require the City to file a notice of any failure to provide its Annual Report, on or before the date specified in a Continuing Disclosure Certificate.

## ARTICLE VI

### FILING AND NOTICE REQUIREMENTS

#### Section 1. Annual Reports and Event Notices.

The Disclosure Manager shall file each Annual Report on such dates as provided in Exhibit D attached hereto and shall file each Event Notice as required pursuant to Article III hereof and the related Continuing Disclosure Certificate. The Disclosure Manager shall submit all filings of Annual Reports and Listed Events through EMMA or any other repository so designated by the MSRB or the SEC, unless the City is otherwise advised by a written opinion of Disclosure Counsel.

#### Section 2. Required Notices.

The Disclosure Manager shall file each notice required to be given to any Bond Insurer, Credit Facility Provider, Paying Agent, Rating Agency or Trustee as set forth in Exhibit E attached hereto.

## ARTICLE VII

### VOLUNTARY DISCLOSURES

The City's policy is to only file annual financial information and operating data and Event Notices that are required under the Continuing Disclosure Certificates and applicable federal securities laws. The Disclosure Manager may determine to file voluntary disclosure information that is not required under the Continuing Disclosure Certificates.

## ARTICLE VIII

### DOCUMENT RETENTION POLICY

In accordance with Article III hereof, the Disclosure Coordinator shall maintain the following materials for a period ending 6 years after the final maturity of an issue of Bonds:

- A. Continuing Disclosure Certificate;
- B. Annual Reports, including any EMMA transmittal letters and EMMA filing receipts;
- C. Event Notices, including any EMMA transmittal letters and EMMA filing receipts;
- D. Rating reports; and
- E. Such other information as the Disclosure Manager determines necessary or useful in accordance with the Continuing Disclosure Certificates.

**EXHIBIT A**  
**RULE 15c2-12**

**EXHIBIT B**  
**CITY OUTSTANDING DEBT**



**EXHIBIT C**  
**RATING HISTORY FOR CITY OUTSTANDING DEBT**

**EXHIBIT D**  
**REQUIRED INFORMATION FOR ANNUAL REPORTS FOR CITY OUTSTANDING DEBT**

**EXHIBIT E**  
**REQUIRED NOTICES**

**EXHIBIT E**

**PRELIMINARY OFFICIAL STATEMENT**

See Preliminary Official Statement (Tab No. 17)

**SPECIMEN**

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA  
CITY OF NITRO

SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A  
(WEST VIRGINIA CWSRF PROGRAM)

No. AR-1

\$679,519

KNOW ALL MEN BY THESE PRESENTS: That CITY OF NITRO, a municipal corporation and political subdivision of the State of West Virginia, in Kanawha County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority"), or registered assigns, the sum of SIX HUNDRED SEVENTY NINE THOUSAND FIVE HUNDRED NINETEEN DOLLARS (\$679,519), or such lesser amount as shall have been advanced to the City 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 December 1, 2017, 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 of one-half percent (0.5%) per annum as set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Ordinance) on this Bond shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2017, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the Paying Agent (as defined in the hereinafter described Ordinance). The interest on this Bond is payable by check or draft mailed to the registered owner hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Ordinance) on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable so long as the Authority is registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia

# SPECIMEN

Department of Environmental Protection (the "DEP") and as otherwise provided by the Loan Agreement dated December 3, 2015 among the Authority, the DEP and the City.

This Bond is issued (i) to pay the costs of design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City (the "Project"); (ii) to fund a reserve account for this Bond; and (iii) to pay certain costs of issuance hereof and related costs. The existing sewerage system of the City, the Project and any further additions, betterments and 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 of the Code of West Virginia, 1931, as amended (the "Act"), and in Ordinance enacted by the City on October 20, 2015, effective November 17, 2015 and a Supplemental Resolution adopted by the City on November 17, 2015 (collectively, the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Ordinance.

This Bond is issued on a parity with respect to liens, pledge and source of and security for payment with the Prior Bonds, all as defined in the Ordinance.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues as defined in the Ordinance, to be derived from the operation of the System, on a parity with the Prior Bonds moneys in the Reserve Account created under the Ordinance (the "Series 2015 A Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City 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 2015 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on this Bond and all 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 2015 A Bonds Reserve Account an amount 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 obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of this Bond for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of this Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

**SPECIMEN**

This Bond is transferable, as provided in the Ordinance, only upon the books of the Registrar, kept for that purpose at the office of the Registrar, by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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 City, 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 City for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, CITY OF NITRO has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated December 3, 2015.

[SEAL]

**SPECIMEN**  
*Sal Carter*

\_\_\_\_\_  
Mayor

ATTEST:

**SPECIMEN**  
*Paul Cox*

\_\_\_\_\_  
Recorder



CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2015 A Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: December 3, 2015.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

By Cher ~~Specimen~~ Seraci  
Its Authorized Officer

EXHIBIT A  
SPECIMEN

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$679,519	12/3/2015	(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	

Total \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

Net Debt Service  
City of Nitro  
West Virginia  
\$679,519

**SPECIMEN**

0.5% Interest Rate

0.5% Administrative Fee

Date	Principal	Coupon	Interest	Total Debt Service	Admin Fee	Net Debt Service
12/1/2017	7,223	0.500%	849.40	8,072.40	437.34	8,509.74
3/1/2018	7,232	0.500%	840.37	8,072.37	437.34	8,509.71
6/1/2018	7,241	0.500%	831.33	8,072.33	437.34	8,509.67
9/1/2018	7,250	0.500%	822.28	8,072.28	437.34	8,509.62
12/1/2018	7,259	0.500%	813.22	8,072.22	437.34	8,509.56
3/1/2019	7,268	0.500%	804.14	8,072.14	437.34	8,509.48
6/1/2019	7,277	0.500%	795.06	8,072.06	437.34	8,509.40
9/1/2019	7,286	0.500%	785.96	8,071.96	437.34	8,509.30
12/1/2019	7,296	0.500%	776.85	8,072.85	437.34	8,510.19
3/1/2020	7,305	0.500%	767.73	8,072.73	437.34	8,510.07
6/1/2020	7,314	0.500%	758.60	8,072.60	437.34	8,509.94
9/1/2020	7,323	0.500%	749.46	8,072.46	437.34	8,509.80
12/1/2020	7,332	0.500%	740.31	8,072.31	437.34	8,509.65
3/1/2021	7,341	0.500%	731.14	8,072.14	437.34	8,509.48
6/1/2021	7,350	0.500%	721.97	8,071.97	437.34	8,509.31
9/1/2021	7,360	0.500%	712.78	8,072.78	437.34	8,510.12
12/1/2021	7,369	0.500%	703.58	8,072.58	437.34	8,509.92
3/1/2022	7,378	0.500%	694.37	8,072.37	437.34	8,509.71
6/1/2022	7,387	0.500%	685.14	8,072.14	437.34	8,509.48
9/1/2022	7,397	0.500%	675.91	8,072.91	437.34	8,510.25
12/1/2022	7,406	0.500%	666.66	8,072.66	437.34	8,510.00
3/1/2023	7,415	0.500%	657.41	8,072.41	437.34	8,509.75
6/1/2023	7,424	0.500%	648.14	8,072.14	437.34	8,509.48
9/1/2023	7,434	0.500%	638.86	8,072.86	437.34	8,510.20
12/1/2023	7,443	0.500%	629.57	8,072.57	437.34	8,509.91
3/1/2024	7,452	0.500%	620.26	8,072.26	437.34	8,509.60
6/1/2024	7,461	0.500%	610.95	8,071.95	437.34	8,509.29
9/1/2024	7,471	0.500%	601.62	8,072.62	437.34	8,509.96
12/1/2024	7,480	0.500%	592.28	8,072.28	437.34	8,509.62
3/1/2025	7,489	0.500%	582.93	8,071.93	437.34	8,509.27
6/1/2025	7,499	0.500%	573.57	8,072.57	437.34	8,509.91
9/1/2025	7,508	0.500%	564.20	8,072.20	437.34	8,509.54
12/1/2025	7,518	0.500%	554.81	8,072.81	437.34	8,510.15
3/1/2026	7,527	0.500%	545.41	8,072.41	437.34	8,509.75
6/1/2026	7,536	0.500%	536.01	8,072.01	437.34	8,509.35
9/1/2026	7,546	0.500%	526.59	8,072.59	437.34	8,509.93
12/1/2026	7,555	0.500%	517.15	8,072.15	437.34	8,509.49
3/1/2027	7,565	0.500%	507.71	8,072.71	437.34	8,510.05
6/1/2027	7,574	0.500%	498.25	8,072.25	437.34	8,509.59
9/1/2027	7,584	0.500%	488.79	8,072.79	437.34	8,510.13
12/1/2027	7,593	0.500%	479.31	8,072.31	437.34	8,509.65
3/1/2028	7,603	0.500%	469.81	8,072.81	437.34	8,510.15
6/1/2028	7,612	0.500%	460.31	8,072.31	437.34	8,509.65
9/1/2028	7,622	0.500%	450.80	8,072.80	437.34	8,510.14
12/1/2028	7,631	0.500%	441.27	8,072.27	437.34	8,509.61
3/1/2029	7,641	0.500%	431.73	8,072.73	437.34	8,510.07
6/1/2029	7,650	0.500%	422.18	8,072.18	437.34	8,509.52

Net Debt Service  
City of Nitro  
CWSRF  
0.5% Interest Rate  
0.5% Administrative Fee  
**SPECIMEN**

Date	Principal	Coupon	Interest	Total Debt Service	Admin Fee	Net Debt Service
9/1/2029	7,660	0.500%	412.62	8,072.62	437.34	8,509.96
12/1/2029	7,669	0.500%	403.04	8,072.04	437.34	8,509.38
3/1/2030	7,679	0.500%	393.45	8,072.45	437.34	8,509.79
6/1/2030	7,689	0.500%	383.86	8,072.86	437.34	8,510.20
9/1/2030	7,698	0.500%	374.24	8,072.24	437.34	8,509.58
12/1/2030	7,708	0.500%	364.62	8,072.62	437.34	8,509.96
3/1/2031	7,717	0.500%	354.99	8,071.99	437.34	8,509.33
6/1/2031	7,727	0.500%	345.34	8,072.34	437.34	8,509.68
9/1/2031	7,737	0.500%	335.68	8,072.68	437.34	8,510.02
12/1/2031	7,746	0.500%	326.01	8,072.01	437.34	8,509.35
3/1/2032	7,756	0.500%	316.33	8,072.33	437.34	8,509.67
6/1/2032	7,766	0.500%	306.63	8,072.63	437.34	8,509.97
9/1/2032	7,776	0.500%	296.93	8,072.93	437.34	8,510.27
12/1/2032	7,785	0.500%	287.21	8,072.21	437.34	8,509.55
3/1/2033	7,795	0.500%	277.47	8,072.47	437.34	8,509.81
6/1/2033	7,805	0.500%	267.73	8,072.73	437.34	8,510.07
9/1/2033	7,814	0.500%	257.97	8,071.97	437.34	8,509.31
12/1/2033	7,824	0.500%	248.21	8,072.21	437.34	8,509.55
3/1/2034	7,834	0.500%	238.43	8,072.43	437.34	8,509.77
6/1/2034	7,844	0.500%	228.63	8,072.63	437.34	8,509.97
9/1/2034	7,854	0.500%	218.83	8,072.83	437.34	8,510.17
12/1/2034	7,863	0.500%	209.01	8,072.01	437.34	8,509.35
3/1/2035	7,873	0.500%	199.18	8,072.18	437.34	8,509.52
6/1/2035	7,883	0.500%	189.34	8,072.34	437.34	8,509.68
9/1/2035	7,893	0.500%	179.49	8,072.49	437.34	8,509.83
12/1/2035	7,903	0.500%	169.62	8,072.62	437.34	8,509.96
3/1/2036	7,913	0.500%	159.74	8,072.74	437.34	8,510.08
6/1/2036	7,923	0.500%	149.85	8,072.85	437.34	8,510.19
9/1/2036	7,932	0.500%	139.95	8,071.95	437.34	8,509.29
12/1/2036	7,942	0.500%	130.03	8,072.03	437.34	8,509.37
3/1/2037	7,952	0.500%	120.11	8,072.11	437.34	8,509.45
6/1/2037	7,962	0.500%	110.17	8,072.17	437.34	8,509.51
9/1/2037	7,972	0.500%	100.21	8,072.21	437.34	8,509.55
12/1/2037	7,982	0.500%	90.25	8,072.25	437.34	8,509.59
3/1/2038	7,992	0.500%	80.27	8,072.27	437.34	8,509.61
6/1/2038	8,002	0.500%	70.28	8,072.28	437.34	8,509.62
9/1/2038	8,012	0.500%	60.28	8,072.28	437.34	8,509.62
12/1/2038	8,022	0.500%	50.26	8,072.26	437.34	8,509.60
3/1/2039	8,032	0.500%	40.24	8,072.24	437.34	8,509.58
6/1/2039	8,042	0.500%	30.20	8,072.20	437.34	8,509.54
9/1/2039	8,052	0.500%	20.14	8,072.14	437.34	8,509.48
12/1/2039	8,062	0.500%	10.08	8,072.08	437.18	8,509.26
	679,519		38,923.10	718,442.10	38,923.10	757,365.20

The quarterly administration fee is calculated based upon 0.5% of the loan payments and will be \$437.34, with a final payment of \$437.18 to total \$38,923.10.

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said City with full power of substitution in the premises.

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

In the presence of:



Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Note is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to Issuer or its agent for registration of transfer, exchange, or payment, and any Note issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. NR-1

\$2,000,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA  
CITY OF NITRO  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>NOTE DATE</u>	<u>CUSIP NO.</u>
1.250%	01/01/2017	12/03/2015	654795 BH5

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: TWO MILLION DOLLARS

## SPECIMEN

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF NITRO, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Note Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Note shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Note surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning July 1, 2016 (each an "Interest Payment Date"), until maturity. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Note on and prior to the Maturity Date hereof shall be payable by check or draft mailed by West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each June 15 and December 15) or, in the event of a default in the payment of Notes, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by The Huntington National Bank, Cincinnati, Ohio, as registrar (the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Notes, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Note for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

The annual interest rate for this note is computed on a 30/360 day basis.

This Note is issued for the purposes of (i) temporarily financing the costs of the acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage system of the City (the "Project"); and (ii) paying certain costs of issuance and related costs.

This Note 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 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and a Bond and Note Ordinance duly passed by the City on October 20, 2015, enacted and effective November 17, 2015, as supplemented by a Supplemental Parameters Resolution duly adopted by the City on

17, 2015, as supplemented by a Supplemental Parameters Resolution duly adopted by the City on November 17, 2015 (collectively, the "Ordinance"), and is subject to all the terms and provisions thereof.

THIS NOTE IS ISSUED JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE CITY'S: (I) SEWER REVENUE BONDS (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SERIES 1996 A, DATED DECEMBER 10, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,575,502 (THE "SERIES 1996 A BONDS"); (II) SEWER REVENUE BONDS (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SERIES 2000 A, DATED JUNE 28, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,050,000 (THE "SERIES 2000 A BONDS"); (III) SEWER SYSTEM REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 5, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$543,800 (THE "SERIES 2001 A BONDS"); (IV) SEWER REVENUE BONDS (WEST VIRGINIA SRF PROGRAM), SERIES 2009 A, DATED NOVEMBER 12, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,910,778 (THE "SERIES 2009 A BONDS"); AND (V) SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A (WEST VIRGINIA CWSRF PROGRAM), DATED DECEMBER 3, 2015, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$679,519 (THE "SERIES 2015 A BONDS").

The principal of this Note is payable solely from and secured by a first lien on the proceeds of any revenue bonds, refunding bonds or other obligations of the City, issued subsequent to the issuance of the Notes; and interest on this Note is payable solely from and secured by a first lien on Surplus Revenues as defined in the Ordinance. This Note does not constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, nor shall the City be obligated to pay the same or the interest hereon except from the sources set forth above.

This Note and the interest thereon are, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

Subject to the requirements for transfer set forth below, this Note is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia. This Note is transferable only by the transfer of registration upon the books of the Registrar by the Owner in person or by its attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner or its duly authorized attorney.

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 Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Note, together with all other obligations of the City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.



NUMBER  
NR-1  
SPECIMEN

This Note, 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 be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Note shall not be valid or obligatory unless authenticated and registered by the Registrar by the execution of the Registrar's Certificate of Authentication and Registration attached hereto and incorporated herein.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the CITY OF NITRO has caused this Note to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Recorder, and has caused this Note to be dated as of the date first written above.

**SPECIMEN**

\_\_\_\_\_  
Mayor

[SEAL]

Attest:

*Rita [Signature]*  
\_\_\_\_\_  
City Recorder

**SPECIMEN**

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

The undersigned, as Registrar for this Note, hereby certifies that this Note is one of the Notes described in the above-mentioned Ordinance and was duly registered in the name of the Owner set forth above on the date set forth below.

Date: December 3, 2015.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

By *Geraci*  
Its Authorized Officer

ASSIGNMENT  
SPECIMEN

Social Security or Other Identifying Number of Assignee

\_\_\_\_\_

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers  
unto

\_\_\_\_\_

the within Note and does hereby irrevocably constitute and appoint

\_\_\_\_\_ to transfer the said Note on the books kept for registration thereof with full power of substitution in the premises.

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

\_\_\_\_\_

SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Note in every particular, without alteration or any change whatever.

NUMBER  
NR-2  
SPECIMEN



Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Note is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Note issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. NR-2

\$2,000,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA  
CITY OF NITRO  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>NOTE DATE</u>	<u>CUSIP NO.</u>
1.750%	01/01/2018	12/03/2015	654795 BJ1

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: TWO MILLION DOLLARS

## SPECIMEN

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF NITRO, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Note Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Note shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Note surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning July 1, 2016 (each an "Interest Payment Date"), until maturity. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Note on and prior to the Maturity Date hereof shall be payable by check or draft mailed by West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each June 15 and December 15) or, in the event of a default in the payment of Notes, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by The Huntington National Bank, Cincinnati, Ohio, as registrar (the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Notes, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Note for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

The annual interest rate for this note is computed on a 30/360 day basis.

This Note is issued for the purposes of (i) temporarily financing the costs of the acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage system of the City (the "Project"); and (ii) paying certain costs of issuance and related costs.

This Note 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 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and a Bond and Note Ordinance duly passed by the City on October 20, 2015, enacted and effective November 17, 2015, as supplemented by a Supplemental Parameters Resolution duly adopted by the City on

NUMBER  
NR-2  
**SPECIMEN**

17, 2015, as supplemented by a Supplemental Parameters Resolution duly adopted by the City on November 17, 2015 (collectively, the "Ordinance"), and is subject to all the terms and provisions thereof.

THIS NOTE IS ISSUED JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE CITY'S: (I) SEWER REVENUE BONDS (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SERIES 1996 A, DATED DECEMBER 10, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,575,502 (THE "SERIES 1996 A BONDS"); (II) SEWER REVENUE BONDS (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SERIES 2000 A, DATED JUNE 28, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,050,000 (THE "SERIES 2000 A BONDS"); (III) SEWER SYSTEM REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 5, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$543,800 (THE "SERIES 2001 A BONDS"); (IV) SEWER REVENUE BONDS (WEST VIRGINIA SRF PROGRAM), SERIES 2009 A, DATED NOVEMBER 12, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,910,778 (THE "SERIES 2009 A BONDS"); AND (V) SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A (WEST VIRGINIA CWSRF PROGRAM), DATED DECEMBER 3, 2015, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$679,519 (THE "SERIES 2015 A BONDS").

The principal of this Note is payable solely from and secured by a first lien on the proceeds of any revenue bonds, refunding bonds or other obligations of the City, issued subsequent to the issuance of the Notes; and interest on this Note is payable solely from and secured by a first lien on Surplus Revenues as defined in the Ordinance. This Note does not constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, nor shall the City be obligated to pay the same or the interest hereon except from the sources set forth above.

This Note and the interest thereon are, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

Subject to the requirements for transfer set forth below, this Note is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia. This Note is transferable only by the transfer of registration upon the books of the Registrar by the Owner in person or by its attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner or its duly authorized attorney.

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 Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Note, together with all other obligations of the City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

**SPECIMEN**

This Note, 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 be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Note shall not be valid or obligatory unless authenticated and registered by the Registrar by the execution of the Registrar's Certificate of Authentication and Registration attached hereto and incorporated herein.

[The remainder of this page intentionally left blank]



# SPECIMEN

IN WITNESS WHEREOF, the CITY OF NITRO has caused this Note to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Recorder, and has caused this Note to be dated as of the date first written above.

*Rose Casbolt*  
\_\_\_\_\_  
Mayor

[SEAL]

Attest:

*Rita*  
\_\_\_\_\_  
City Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

The undersigned, as Registrar for this Note, hereby certifies that this Note is one of the Notes described in the above-mentioned Ordinance and was duly registered in the name of the Owner set forth above on the date set forth below.

Date: December 3, 2015.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

By Chen Sheng Wang  
Its Authorized Officer

**SPECIMEN**

SPECIMEN  
ASSIGNMENT

Social Security or Other Identifying Number of Assignee

---

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers  
unto

---

the within Note and does hereby irrevocably constitute and appoint

---

to transfer the said Note on the books kept for registration thereof with full power of substitution  
in the premises.

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

---

SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Note in every particular, without alteration or any change whatever.

NUMBER  
NR-3  
SPECIMEN



Except as otherwise provided in the Ordinance, this global bond may be transferred, in whole but not in part, only to another nominee of DTC (as defined in the Ordinance) or to a successor of DTC or to a nominee of a successor of DTC. Unless this Note is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to Issuer or its agent for registration of transfer, exchange, or payment, and any Note issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. NR-3

\$2,735,000

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA  
CITY OF NITRO  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>NOTE DATE</u>	<u>CUSIP NO.</u>
2.250%	01/01/2019	12/03/2015	654795 BK8

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: TWO MILLION SEVEN HUNDRED THIRTY-FIVE DOLLARS

SPECIMEN

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF NITRO, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefore, as hereinafter set forth, to the Registered Owner specified above, or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount from the Interest Payment Date (as hereinafter defined) preceding the date of authentication hereof or, if authenticated after the Record Date (as hereinafter defined) but prior to the applicable Interest Payment Date or on said Interest Payment Date, from said Interest Payment Date or, if no interest has been paid, from the Note Date specified above, or, if and to the extent that the City shall default in the payment of interest on any Interest Payment Date, then this Note shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, and in which case any Note surrendered for transfer or exchange shall be dated as of the Interest Payment Date to which interest has been paid in full, at the Interest Rate per annum specified above, semiannually, on January 1 and July 1, in each year, beginning July 1, 2016 (each an "Interest Payment Date"), until maturity. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Interest accruing on this Note on and prior to the Maturity Date hereof shall be payable by check or draft mailed by West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each June 15 and December 15) or, in the event of a default in the payment of Notes, that special record date to be fixed by the hereinafter named Registrar by notice given to the Registered Owners not less than 10 days prior to said special record date at the address of such Registered Owner as it appears on the registration books of the City maintained by The Huntington National Bank, Cincinnati, Ohio, as registrar (the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Notes, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner to the Paying Agent at least 5 days prior to such Record Date. Principal and premium, if any, shall be paid when due upon presentation and surrender of this Note for payment at the principal office of the Paying Agent, in Charleston, West Virginia.

The annual interest rate for this note is computed on a 30/360 day basis.

This Note is issued for the purposes of (i) temporarily financing the costs of the acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage system of the City (the "Project"); and (ii) paying certain costs of issuance and related costs.

This Note 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 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and a Bond and Note Ordinance duly passed by the City on October 20, 2015, enacted and effective November 17, 2015, as supplemented by a Supplemental Parameters Resolution duly adopted by the City on

NUMBER  
SPECIMEN

17, 2015, as supplemented by a Supplemental Parameters Resolution duly adopted by the City on November 17, 2015 (collectively, the "Ordinance"), and is subject to all the terms and provisions thereof.

THIS NOTE IS ISSUED JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE CITY'S: (I) SEWER REVENUE BONDS (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SERIES 1996 A, DATED DECEMBER 10, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,575,502 (THE "SERIES 1996 A BONDS"); (II) SEWER REVENUE BONDS (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SERIES 2000 A, DATED JUNE 28, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,050,000 (THE "SERIES 2000 A BONDS"); (III) SEWER SYSTEM REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 5, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$543,800 (THE "SERIES 2001 A BONDS"); (IV) SEWER REVENUE BONDS (WEST VIRGINIA SRF PROGRAM), SERIES 2009 A, DATED NOVEMBER 12, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,910,778 (THE "SERIES 2009 A BONDS"); AND (V) SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A (WEST VIRGINIA CWSRF PROGRAM), DATED DECEMBER 3, 2015, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$679,519 (THE "SERIES 2015 A BONDS").

The principal of this Note is payable solely from and secured by a first lien on the proceeds of any revenue bonds, refunding bonds or other obligations of the City, issued subsequent to the issuance of the Notes; and interest on this Note is payable solely from and secured by a first lien on Surplus Revenues as defined in the Ordinance. This Note does not constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, nor shall the City be obligated to pay the same or the interest hereon except from the sources set forth above.

This Note and the interest thereon are, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

Subject to the requirements for transfer set forth below, this Note is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia. This Note is transferable only by the transfer of registration upon the books of the Registrar by the Owner in person or by its attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner or its duly authorized attorney.

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 Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Note, together with all other obligations of the City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

NUMBER  
NR-3  
SPECIMEN

This Note, 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 be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

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

This Note shall not be valid or obligatory unless authenticated and registered by the Registrar by the execution of the Registrar's Certificate of Authentication and Registration attached hereto and incorporated herein.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the CITY OF NITRO has caused this Note to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Recorder, and has caused this Note to be dated as of the date first written above.

*[Handwritten Signature]*  
\_\_\_\_\_  
Mayor

[SEAL]

Attest:

*[Handwritten Signature]*  
\_\_\_\_\_  
City Recorder



CERTIFICATE OF AUTHENTICATION AND REGISTRATION

The undersigned, as Registrar for this Note, hereby certifies that this Note is one of the Notes described in the above-mentioned Ordinance and was duly registered in the name of the Owner set forth above on the date set forth below.

Date: December 3, 2015.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

By *SPES*  
Its Authorized Officer **SPES**

ASSIGNMENT  
CERTIFICATE

Social Security or Other Identifying Number of Assignee

\_\_\_\_\_

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers  
unto

\_\_\_\_\_

the within Note and does hereby irrevocably constitute and appoint

\_\_\_\_\_ to transfer the said Note on the books kept for registration thereof with full power of substitution in the premises.

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

\_\_\_\_\_

SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of the within Note in every particular, without alteration or any change whatever.



**WEST VIRGINIA**

**Water Development Authority**

*Celebrating 41 Years of Service 1974 - 2015*

2.11

CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A  
(WEST VIRGINIA CWSRF PROGRAM)  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

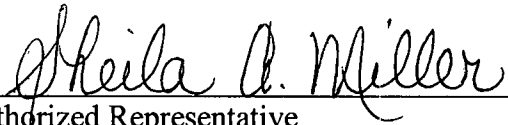
CONSENT TO ISSUANCE OF PARITY BONDS AND SUBORDINATE NOTES

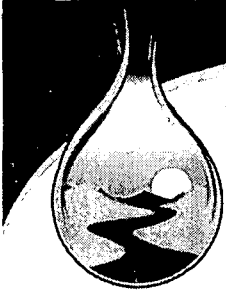
In reliance upon a certificate of Young & Associates, CPAs AC, independent certified public accountants and Jackson Kelly PLLC, bond counsel, stating that the coverage and parity requirements have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the Prior Bonds, hereinafter defined and described, hereby consents to the issuance of the Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program), in the original aggregate principal amount of \$679,519 (the "Series 2015 Bonds"), by the City of Nitro (the "Issuer"), under the terms of the ordinances and resolutions authorizing the Series 2015 Bonds and Series 2015 Notes, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's (i) \$4,575,902 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 1996 A, dated December 10, 1996 (the "Series 1996 A Bonds"); (ii) \$2,050,000 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 2000 A, dated June 28, 2000 (the "Series 2000 A Bonds"); (iii) \$543,900 Sewer Revenue Bonds (West Virginia SRF Program), Series 2001 A, dated June 5, 2001 (the "Series 2001 A Bonds"); and (iv) \$1,910,778 Sewer Revenue Bonds, (West Virginia SRF Program), Series 2009 A, dated November 12, 2009 (the "Series 2009 A Bonds"); and to the issuance of the Sewerage System Bond Anticipation Notes, Series 2015, in the original aggregate principal amount of \$6,735,000 (the "Series 2015 Notes") junior and subordinate to the lien of the Prior Bonds. The Series 1996 A Bonds, the Series 2000 A Bonds, the Series 2001 A Bonds, and the Series 2009 A Bonds are collectively referred to as the "Prior Bonds."

1009 Bullitt Street, Charleston, WV 25301  
Phone (304) 414-6500 / fax (304) 414-0865  
[www.wvwda.org](http://www.wvwda.org)

WITNESS my signature on this 3<sup>rd</sup> day of December, 2015.

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

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



## WEST VIRGINIA

Infrastructure & Jobs Development Council

Gov. Earl Ray Tomblin  
Chairman

Kenneth Lowe, Jr.  
Public Member

David "Bones" McComas  
Public Member

Ron Justice  
Public Member

Louis R. Spatafore  
Public Member

Joseph Freeland  
Public Member

D. K. "Bud" Carr  
Public Member

James W. Ellars, P.E.  
Executive Director

Barbara J. Pauley  
Executive Assistant

Thursday, August 15, 2013

Danny Lewis, General Manager  
Nitro Sanitary Board  
P O Box 607  
Nitro, WV 25143-0607

Re: Nitro Sanitary Board  
Sewer Line Extension Project 2013S-1427  
Nitro Regional Wastewater Utility Wastewater System Improvements.  
Funding Recommendation Accepted

Dear Danny Lewis:

The complete Funding Recommendation Decision Form that was submitted on 8/15/2013 for the above-referenced project has been received. The total project cost is \$8,350,000.00.

Please contact each Funding Agency directly for specific information on the steps the Sponsor needs to follow to apply for these funds. **Please note that this letter does not constitute a binding commitment of funds from the Council.**

If you have any questions, please contact me at [jellars@wvwda.org](mailto:jellars@wvwda.org) or (304) 414-6501.

Sincerely,

James W. Ellars, PE.  
Executive Director

cc: DEP Rep Name, DEP  
Terry Martin, Region 3 - Regional Intergovernmental Council  
Jessie Parker, S & S Engineers Inc.  
John H. Young, John H. Young, CPA

SRF-BPA-1  
(09/14)

BOND PURCHASE AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND BOND PURCHASE AGREEMENT (the "Bond Purchase 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 NITRO  
(2013S-1427/C-544273)  
(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 acquire bonds of 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 utilize moneys from the Fund to purchase the bonds of local governments to provide the financing 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 Purchase of Bonds with attachments and exhibits and an Amended Application for Purchase of Bonds also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference;

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; and

WHEREAS, the Local Government meets the "disadvantaged community" provisions of the SRF Regulations.

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, who was selected pursuant to Article 1, Chapter 5G of the Code of West Virginia of 1931, as amended.

1.3 “Decentralized System” means wastewater treatment systems that treat wastewater, then reusing and/or dispersing the reclaimed water, as close to where it is generated as practical in each circumstance. A Decentralized System may include: on-site systems contained entirely within the simple boundaries of the lot it serves; small-scale collective systems, with their reuse/dispersal sites on easements on the lots served, on vacant lots purchased for this purpose, on off-site properties, or a combination of these; larger scale collective systems utilizing dispersed or aggregated reuse/dispersal sites or discharging to surface water.

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, and to be purchased by the Authority with money held in the Fund, all in accordance with the provisions of this Bond Purchase 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, as amended.

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 Bond Purchase 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 Bond Purchase 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, in accordance with generally accepted governmental accounting standards. 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 Local Bonds proceeds 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 Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Local Government shall provide and maintain competent and adequate engineering services satisfactory to the Authority and DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, DEP and the Local Government at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Government shall require the Consulting Engineers to submit Record Drawings, 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 or updated Operation and Maintenance Manual, if necessary 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 a state certified plant operator prior to the Project being 50% complete and notify the DEP of such employment. The Local Government shall retain the operator(s) to operate the System during the entire term of this Bond Purchase Agreement.

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 20<sup>th</sup> of each month to the DEP and the Authority.

2.13 The Local Government shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia (the "PSC").

2.14 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 Purchase of Local Bonds; Issuance of Local Bonds

3.1 The agreement of the Authority and DEP to purchase the Local Bonds 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 Local Bonds will be expended and the procedures as to the disbursement of bond 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 Bond Purchase 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 proceeds of the Local Bonds 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 Bond Purchase 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 purchase the Local Bonds of the Local Government and the Local Government shall issue and sell the Local Bonds to the Authority, and in furtherance thereof it is agreed that the Local Government shall sell to the Authority and the Authority shall purchase 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 Local Bonds shall be secured and shall be repaid in the manner hereinafter provided in this Bond Purchase 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 Closing."

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 financing of wastewater treatment projects and that the obligation of the Authority to purchase the Local Bonds is subject to the Local Government's fulfilling all of the terms and conditions of this Bond Purchase Agreement on or prior to the Date of 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 bonds will be purchased 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.

3.7 The Local Government shall comply with all federal requirements applicable to the Loan (including those imposed by P.L. 113-76, Consolidated Appropriations Act, 2014, and related SRF Policy Guidelines issued by the EPA) which the Local Government understands includes, among other things, requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Local Government has requested and obtained a waiver from the EPA pertaining to the Project or (ii) DEP has otherwise advised the Local Government in writing that the American Iron and Steel Requirement is not applicable to the Project.

3.8 The Local Government shall comply with all record keeping and reporting requirements under the Clean Water Act, including any reports required by a Federal agency or DEP such as performance indicators of program deliverables, information on costs and Project progress. The Local Government understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

#### ARTICLE IV

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

4.1 The Local Government shall, as one of the conditions of the Authority and DEP to purchase the Local Bonds, 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 SRF 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 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 Local Bonds 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 two percent (2%) of the proceeds of the Local Bonds will be advanced on the Date of 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 purchase the Local Bonds 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 purchase the Local Bonds.

## 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 Bond Purchase Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to purchase the Local Bonds, 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 Bond Purchase 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 Bond Purchase Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to this Bond Purchase Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Local Bonds 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 Bond Purchase 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 Bond Purchase Agreement.

6.2 The Local Government hereby warrants and represents that all information provided to the Authority and DEP in this Bond Purchase 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 purchasing and receiving the Local Bonds, the Authority and DEP shall have the right to cancel all or any of their obligations under this Bond Purchase Agreement if (a) any representation made to the Authority and DEP by the Local Government in connection with the issuance of the Local Bonds 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 Bond Purchase Agreement.

6.3 The Local Government hereby agrees to repay on or prior to the Date of Closing any moneys due and owing by it to the Authority or any other lender for the planning or design of the Project.

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 Bond Purchase Agreement by the Authority as soon as practicable after the Date of 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 Bond Purchase 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 Bond Purchase Agreement, and this Bond Purchase Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.3 This Bond Purchase 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 Bond Purchase Agreement.

7.4 No waiver by any party of any term or condition of this Bond Purchase 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 Bond Purchase Agreement.

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

7.6 By execution and delivery of this Bond Purchase 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 Bond Purchase Agreement shall terminate upon the earlier of:

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

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

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

CITY OF NITRO

(SEAL)

Attest:

*Rita Cox*  
Its: Recorder

By: *Dave Coslob*  
Its: Mayor  
Date: December 3, 2015

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

By: *J.H. Marshall*  
Its: Director  
Date: December 3, 2015

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

Attest:

*Sheila A. Miller*  
Its: Authorized Officer

By: *[Signature]*  
Its: Executive Director  
Date: December 3, 2015

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. Renewal and Replacement Fund Deposits	_____	_____	_____	_____

\_\_\_\_\_  
 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 20<sup>th</sup> day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.**

EXHIBIT C

PAYMENT REQUISITION FORM

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

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

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

\_\_\_\_\_  
(Name of Bonds)

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

1. My firm is engineer for the acquisition and construction of \_\_\_\_\_ to the \_\_\_\_\_ system (the "Project") of \_\_\_\_\_ (the "Issuer"), to be constructed primarily in \_\_\_\_\_ County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the bond \_\_\_\_\_ adopted or enacted by the Issuer on \_\_\_\_\_, and the Bond Purchase 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 B attached hereto as Exhibit A, and my firm<sup>1</sup> has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project

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

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 thereof<sup>2</sup>, the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Funding Assistance 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; (xi) the successful bidders have provided the Dreg-Free Workplace Affidavit as evidence of the Vendor's compliance with the provisions of Article 1D, Chapter 21 of the West Virginia Code; and (xii) attached hereto as Exhibit A is the final amended "Schedule B - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

4. The Project will serve \_\_\_\_\_ new customers in the \_\_\_\_\_ area.

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

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

[SEAL]

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<sup>2</sup>If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of \_\_\_\_\_ of even date herewith," at the beginning of (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, ground breaking 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. FISCAL SUSTAINABILITY – The Local Government shall submit an acceptable fiscal sustainability plan that complied with Section 603(d)(1)(E) of the Clean Water Act to DEP no later than six months following substantial completion of the Project. This requirement shall be included in the bond closing documents.

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

D. CLOSING REQUIREMENTS – The Closing is contingent on the DEP's receipt of the Final Title Opinion. If the Local Government has not obtained all easements for the emergency work, then no funds can be advanced to pay for the costs of the emergency work until DEP has received a Supplemental Title Opinion regarding the emergency work easements.

EXHIBIT F

MONTHLY PAYMENT FORM

West Virginia Water Development Authority  
1009 Bullitt Street  
Charleston, WV 25301

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 Closing]

West Virginia Water Development Authority  
1009 Bullitt Street  
Charleston, WV 25301

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

Ladies and Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a bond purchase agreement dated \_\_\_\_\_, \_\_\_\_\_, including all schedules and exhibits attached thereto (the "Bond Purchase 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 Bond Purchase Agreement. The Local Bonds are issued in the principal amount of \$ \_\_\_\_\_, in the form of one bond, registered as to principal only to the Authority, with principal 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 Bond Purchase 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 Bond Purchase 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 Bond Purchase 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 Bond Purchase 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 Bond Purchase 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 Bond Purchase Agreement.

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

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

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

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

Very truly yours,

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

A.	Series A Bonds (CWSRF Base Program)	
	Principal Amount of Local Bonds	\$679,519
	Purchase Price of Local Bonds	\$679,519

The Local Bonds shall bear interest at a rate of 0.5% per annum. Commencing December 1, 2017, principal of and interest on the Local Bonds is payable quarterly, with an administrative fee of 0.5%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Government shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

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

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

Number of Proposed New Customers to Be Served: 105  
Location: Blakes Creek Road and Bailes Drive areas of Nitro, Putnam County

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

- (i) \$4,575,902 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 1996 A, dated December 10, 1996 (the "Series 1996 A Bonds");

- (ii) \$2,050,000 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 2000 A, dated June 28, 2000 (the “Series 2000 A Bonds”);
- (iii) \$543,900 Sewer Revenue Bonds (West Virginia SRF Program), Series 2001 A, dated June 5, 2001 (the “Series 2001 A Bonds”); and
- (iv) \$1,910,778 Sewer Revenue Bonds, (West Virginia SRF Program), Series 2009 A, dated November 12, 2009 (the “Series 2009 A Bonds”).

**SCHEDULE Y**  
**DEBT SERVICE SCHEDULE**

Net Debt Service City of Nitro CWSRF \$679,519 0.5% Interest Rate 0.5% Administrative Fee							
Date	Principal	Coupon	Interest	Total Debt Service	Admin Fee	Net Debt Service	
12/1/2017	7,223	0.500%	849.40	8,072.40	437.34	8,509.74	
3/1/2018	7,232	0.500%	840.37	8,072.37	437.34	8,509.71	
6/1/2018	7,241	0.500%	831.33	8,072.33	437.34	8,509.67	
9/1/2018	7,250	0.500%	822.28	8,072.28	437.34	8,509.62	
12/1/2018	7,259	0.500%	813.22	8,072.22	437.34	8,509.56	
3/1/2019	7,268	0.500%	804.14	8,072.14	437.34	8,509.48	
6/1/2019	7,277	0.500%	795.06	8,072.06	437.34	8,509.40	
9/1/2019	7,286	0.500%	785.96	8,071.96	437.34	8,509.30	
12/1/2019	7,296	0.500%	776.85	8,072.85	437.34	8,510.19	
3/1/2020	7,305	0.500%	767.73	8,072.73	437.34	8,510.07	
6/1/2020	7,314	0.500%	758.60	8,072.60	437.34	8,509.94	
9/1/2020	7,323	0.500%	749.46	8,072.46	437.34	8,509.80	
12/1/2020	7,332	0.500%	740.31	8,072.31	437.34	8,509.65	
3/1/2021	7,341	0.500%	731.14	8,072.14	437.34	8,509.48	
6/1/2021	7,350	0.500%	721.97	8,071.97	437.34	8,509.31	
9/1/2021	7,360	0.500%	712.78	8,072.78	437.34	8,510.12	
12/1/2021	7,369	0.500%	703.58	8,072.58	437.34	8,509.92	
3/1/2022	7,378	0.500%	694.37	8,072.37	437.34	8,509.71	
6/1/2022	7,387	0.500%	685.14	8,072.14	437.34	8,509.48	
9/1/2022	7,397	0.500%	675.91	8,072.91	437.34	8,510.25	
12/1/2022	7,406	0.500%	666.66	8,072.66	437.34	8,510.00	
3/1/2023	7,415	0.500%	657.41	8,072.41	437.34	8,509.75	
6/1/2023	7,424	0.500%	648.14	8,072.14	437.34	8,509.48	
9/1/2023	7,434	0.500%	638.86	8,072.86	437.34	8,510.20	
12/1/2023	7,443	0.500%	629.57	8,072.57	437.34	8,509.91	
3/1/2024	7,452	0.500%	620.26	8,072.26	437.34	8,509.60	
6/1/2024	7,461	0.500%	610.95	8,071.95	437.34	8,509.29	
9/1/2024	7,471	0.500%	601.62	8,072.62	437.34	8,509.96	
12/1/2024	7,480	0.500%	592.28	8,072.28	437.34	8,509.62	
3/1/2025	7,489	0.500%	582.93	8,071.93	437.34	8,509.27	
6/1/2025	7,499	0.500%	573.57	8,072.57	437.34	8,509.91	
9/1/2025	7,508	0.500%	564.20	8,072.20	437.34	8,509.54	
12/1/2025	7,518	0.500%	554.81	8,072.81	437.34	8,510.15	
3/1/2026	7,527	0.500%	545.41	8,072.41	437.34	8,509.75	
6/1/2026	7,536	0.500%	536.01	8,072.01	437.34	8,509.35	
9/1/2026	7,546	0.500%	526.59	8,072.59	437.34	8,509.93	
12/1/2026	7,555	0.500%	517.15	8,072.15	437.34	8,509.49	
3/1/2027	7,565	0.500%	507.71	8,072.71	437.34	8,510.05	
6/1/2027	7,574	0.500%	498.25	8,072.25	437.34	8,509.59	
9/1/2027	7,584	0.500%	488.79	8,072.79	437.34	8,510.13	
12/1/2027	7,593	0.500%	479.31	8,072.31	437.34	8,509.65	
3/1/2028	7,603	0.500%	469.81	8,072.81	437.34	8,510.15	
6/1/2028	7,612	0.500%	460.31	8,072.31	437.34	8,509.65	
9/1/2028	7,622	0.500%	450.80	8,072.80	437.34	8,510.14	
12/1/2028	7,631	0.500%	441.27	8,072.27	437.34	8,509.61	
3/1/2029	7,641	0.500%	431.73	8,072.73	437.34	8,510.07	
6/1/2029	7,650	0.500%	422.18	8,072.18	437.34	8,509.52	

Nov 3, 2015 4:11 pm Prepared by Piper Jaffray & Co.

(WDA:LOANS-NITRO115) 4

Net Debt Service

City of Nitro

CWSRF

\$679,519

0.5% Interest Rate

0.5% Administrative Fee

Date	Principal	Coupon	Interest	Total Debt Service	Admin Fee	Net Debt Service
9/1/2029	7,660	0.500%	412.62	8,072.62	437.34	8,509.96
12/1/2029	7,669	0.500%	403.04	8,072.04	437.34	8,509.38
3/1/2030	7,679	0.500%	393.45	8,072.45	437.34	8,509.79
6/1/2030	7,689	0.500%	383.86	8,072.86	437.34	8,510.20
9/1/2030	7,698	0.500%	374.24	8,072.24	437.34	8,509.58
12/1/2030	7,708	0.500%	364.62	8,072.62	437.34	8,509.96
3/1/2031	7,717	0.500%	354.99	8,071.99	437.34	8,509.33
6/1/2031	7,727	0.500%	345.34	8,072.34	437.34	8,509.68
9/1/2031	7,737	0.500%	335.68	8,072.68	437.34	8,510.02
12/1/2031	7,746	0.500%	326.01	8,072.01	437.34	8,509.35
3/1/2032	7,756	0.500%	316.33	8,072.33	437.34	8,509.67
6/1/2032	7,766	0.500%	306.63	8,072.63	437.34	8,509.97
9/1/2032	7,776	0.500%	296.93	8,072.93	437.34	8,510.27
12/1/2032	7,785	0.500%	287.21	8,072.21	437.34	8,509.55
3/1/2033	7,795	0.500%	277.47	8,072.47	437.34	8,509.81
6/1/2033	7,805	0.500%	267.73	8,072.73	437.34	8,510.07
9/1/2033	7,814	0.500%	257.97	8,071.97	437.34	8,509.31
12/1/2033	7,824	0.500%	248.21	8,072.21	437.34	8,509.55
3/1/2034	7,834	0.500%	238.43	8,072.43	437.34	8,509.77
6/1/2034	7,844	0.500%	228.63	8,072.63	437.34	8,509.97
9/1/2034	7,854	0.500%	218.83	8,072.83	437.34	8,510.17
12/1/2034	7,863	0.500%	209.01	8,072.01	437.34	8,509.35
3/1/2035	7,873	0.500%	199.18	8,072.18	437.34	8,509.52
6/1/2035	7,883	0.500%	189.34	8,072.34	437.34	8,509.68
9/1/2035	7,893	0.500%	179.49	8,072.49	437.34	8,509.83
12/1/2035	7,903	0.500%	169.62	8,072.62	437.34	8,509.96
3/1/2036	7,913	0.500%	159.74	8,072.74	437.34	8,510.08
6/1/2036	7,923	0.500%	149.85	8,072.85	437.34	8,510.19
9/1/2036	7,932	0.500%	139.95	8,071.95	437.34	8,509.29
12/1/2036	7,942	0.500%	130.03	8,072.03	437.34	8,509.37
3/1/2037	7,952	0.500%	120.11	8,072.11	437.34	8,509.45
6/1/2037	7,962	0.500%	110.17	8,072.17	437.34	8,509.51
9/1/2037	7,972	0.500%	100.21	8,072.21	437.34	8,509.55
12/1/2037	7,982	0.500%	90.25	8,072.25	437.34	8,509.59
3/1/2038	7,992	0.500%	80.27	8,072.27	437.34	8,509.61
6/1/2038	8,002	0.500%	70.28	8,072.28	437.34	8,509.62
9/1/2038	8,012	0.500%	60.28	8,072.28	437.34	8,509.62
12/1/2038	8,022	0.500%	50.26	8,072.26	437.34	8,509.60
3/1/2039	8,032	0.500%	40.24	8,072.24	437.34	8,509.58
6/1/2039	8,042	0.500%	30.20	8,072.20	437.34	8,509.54
9/1/2039	8,052	0.500%	20.14	8,072.14	437.34	8,509.48
12/1/2039	8,062	0.500%	10.08	8,072.08	437.18	8,509.26
	679,519		38,923.10	718,442.10	38,923.10	757,365.20

The quarterly administration fee is calculated based upon 0.5% of the loan payments and will be \$437.34, with a final payment of \$437.18 to total \$38,923.10.

**CITY OF NITRO (WEST VIRGINIA)  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES  
SERIES 2015**

NOTE PURCHASE AGREEMENT

November 24, 2015

City of Nitro  
2009 20th Street  
Nitro, West Virginia 25143

Ladies and Gentlemen:

Crews & Associates, Inc. (the “Underwriter”), offers to enter into this Note Purchase Agreement (the “Purchase Agreement”) with the City of Nitro, West Virginia (the “City”) for the purchase of the Sewerage System Bond Anticipation Notes, Series 2015 (the “Series 2015 Notes”), to be issued under and pursuant to an Ordinance as hereinafter defined, and a Trust Indenture dated as of the closing date (the “Indenture”), between the City and The Huntington National Bank, Cincinnati, Ohio as Trustee (the “Trustee”). This offer is made subject to acceptance and execution of this Purchase Agreement by the City prior to 6:00 p.m., local prevailing time on the date hereof, or until withdrawn by the Underwriter upon written notice to the City as permitted herein, whichever shall occur earlier. Upon such acceptance and approval, as evidenced by the signature of the Mayor of the City, this Purchase Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the City and the Underwriter. All capitalized terms used in this Purchase Agreement and not otherwise defined herein shall have the meanings set forth in the hereinafter described Ordinance.

The City acknowledges and agrees that (i) the purchase and sale of the Series 2015 Notes pursuant to this Purchase Agreement is an arm’s-length commercial transaction between the City and the Underwriter, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as a principal and is not acting as the agent or fiduciary of the City, (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the City with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided other services or is currently providing other services to the City on other matters), (iv) the Underwriter has no obligation to the City with respect to the offering contemplated hereby except the obligations expressly set forth in this Purchase Agreement, and (v) the City has consulted their own legal, financial and other advisors to the extent they have deemed appropriate.

1. The proceeds of the Series 2015 Notes shall be used to: (i) temporarily finance the costs of acquisition and construction of additions, betterments, extensions and improvements to the City’s sanitary sewer collection and treatment system (the “System”), specifically including, but not limited to, extension of service to approximately 94 new

customers, rehabilitation of existing sewer lines, relining of a 42 inch transmission main and replacement of a belt press, along with all necessary appurtenances (collectively, the “Project”); and (ii) to pay costs of issuance of the Series 2015 Notes and related costs.

The Series 2015 Notes shall be as described in, and shall be issued and secured under and pursuant to the provisions of the an ordinance enacted by the Council of the City on October 20, 2015, which became effective on November 17, 2015, as supplemented by a Supplemental Parameters Resolution adopted on November 17, 2015 and a Certificate of Determinations, signed by the Mayor of the City, dated November 24, 2015 (said ordinance, as so supplemented and together with the Certificate of Determinations, collectively hereinafter referred to as the “Ordinance”).

The City intends to permanently finance the costs of the Project and repay the principal amount of the Series 2015 Notes through the issuance of its sewer revenue bonds, in multiple series, to be purchased by the West Virginia Water Development Authority (the “Authority”) on behalf of the West Virginia Department of Environmental Protection Clean Water State Revolving Loan Fund (the “CWSRF”). The City has received a commitment letter from the CWSRF (the “CWSRF Commitment Letter”) to purchase multiple series of sewer revenue bonds from the City in the following not to exceed amounts on or before the following dates (collectively, the “CWSRF Bonds”):

<u>On or Before:</u>	<u>Principal Amount:</u>
December 15, 2016	\$2,000,000.00
December 15, 2017	\$2,000,000.00
December 15, 2018	\$3,204,821.00

The City will issue a series of CWSRF Bonds contemporaneously with the issuance of the Series 2015 Notes in the amount of \$679,519 (the “Series 2015 A CWSRF Bonds”) the proceeds of which will be used to refund all of the City’s outstanding Sewerage System Design Bond Anticipation Notes, Series 2013 A (The Huntington National Bank), issued in the original aggregate amount of \$800,000, dated September 20, 2013 (the “Series 2013 A Notes”), of which \$679,519 is currently outstanding. The City has pledged to issue the subsequent series of the CWSRF Bonds on or before each of the dates set forth above to pay a portion of the outstanding principal amount of the Series 2015 Notes.

The payment of principal of the Series 2015 Notes will be secured by the proceeds of the CWSRF Bonds (except for the Series 2015 A CWSRF Bonds issued contemporaneously therewith). The payment of the interest on the Series 2015 Notes will be secured by the Surplus Revenues derived from the System.

Upon the terms and conditions provided, and upon the basis of the representations and warranties set forth in, this Purchase Agreement, the Underwriter agrees to purchase from the City, and the City agrees to sell to the Underwriter, the Series 2015 Notes, at an aggregate purchase price of \$6,667,650 (\$6,735,000 minus Underwriter’s discount of \$67,350).

The principal of the Series 2015 Notes shall mature on the dates and in the amounts, and shall bear interest from their date, until maturity, payable semiannually on January 1 and July 1 (each an "Interest Payment Date"), commencing July 1, 2016, as more fully described on Exhibit A attached hereto and incorporated herein by reference.

The Underwriter agrees to make a bona fide public offering of the Series 2015 Notes at the initial offering prices as set forth in the Official Statement (as hereinafter defined) and in Exhibit A, which prices may be changed from time to time by the Underwriter.

2. Concurrently with the acceptance of this Purchase Agreement by the City, the City shall deliver or cause to be delivered to the Underwriter five copies of the Official Statement relating to the Series 2015 Notes, substantially in the form of the Preliminary Official Statement, dated November 19, 2015 (the "Preliminary Official Statement"), and within not less than seven (7) days after the date of this Purchase Agreement, five copies of the Official Statement (the "Official Statement") dated the date of this Purchase Agreement, signed on behalf of the City by its Mayor as requested below.

3. The Official Statement has been approved for distribution by the Ordinance. The City authorizes the use of copies of the Official Statement and the Ordinance in connection with the public offering and sale of the Series 2015 Notes.

On November 19, 2015, the City delivered to the Underwriter the Preliminary Official Statement and the Underwriter received a certificate from the City which deemed the Preliminary Official Statement "final" within the meaning of clause (b)(1) of Rule 15c2-12 ("Rule 15c2-12") under the Securities and Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) and Rule G-32 and all other rules of the Municipal Securities Rulemaking Board. The City shall deliver or cause to be delivered to the Underwriter, after the acceptance by the City of this Purchase Agreement, and within the time required by Rule 15c2-12, an adequate number of copies of the Official Statement.

Unless otherwise notified in writing by the Underwriter on or prior to the date of Closing, the "End of the Underwriting Period" for the Series 2015 Notes for all purposes of Rule 15c2-12 is the date of the Closing, as hereinafter defined. In the event such notice is given in writing by the Underwriter, the Underwriter agrees to notify the City in writing following the occurrence of the End of the Underwriting Period for the Series 2015 Notes as defined in Rule 15c2-12.

The City covenants and agrees that if, after the date of this Purchase Agreement and until after the End of the Underwriting Period (as determined above), any event shall occur of which the City has actual knowledge as a result of which it is necessary to amend or supplement the Official Statement to make the Official Statement not misleading in any material respect in light of the circumstances then existing, or if it is necessary to amend or supplement the Official Statement to comply with law, to notify the Underwriter (and for the purposes hereof to provide the Underwriter with such information as they may from time to time reasonably request), and to cooperate in the preparation of a reasonable number of copies of either amendments or supplements to the Official Statement (in form and substance satisfactory to the Underwriter and its counsel) at the expense of the City so that the Official Statement as so



amended and supplemented will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances existing at the time the Official Statement is delivered to a purchaser, not misleading in any material respect.

For the purposes of this paragraph and for only so long as required by this paragraph, the City will furnish such information with respect to themselves as the Underwriter from time to time reasonably requests. The Underwriter hereby agrees that it will deposit or cause to be deposited with the Municipal Securities Rulemaking Board a copy of the Official Statement at or prior to the time contemplated by Rule 15c2-12.

The Underwriter acknowledges and agrees that any liability of the City that may arise from its representations and agreements made in this paragraph 3 shall be limited to the proceeds of the Series 2015 Notes (provided that the foregoing shall not be deemed to prevent the Underwriter or the City from seeking to enforce such agreements).

4. At 10:00 a.m. prevailing time, on December 3, 2015, or such other dates as shall be agreed upon by the parties to this Purchase Agreement (the "Closing"), the City will deliver or cause to be delivered to the Underwriter, (a) the Series 2015 Notes in the form of one certificate for each maturity fully registered in the name of CEDE & CO., as registered owner and nominee of The Depository Trust Company, New York, New York ("DTC"), duly executed by the City and authenticated by the Registrar, and (b) at such other place as we mutually agree upon, will deliver to the Underwriter the other documents required in this Purchase Agreement and by the Ordinance and the Indenture. Upon such delivery of the Series 2015 Notes, the Underwriter will accept such delivery and pay the purchase price therefor, plus any accrued interest thereon, in immediately available funds to the order of the Depository Bank, for the account of the City. Such delivery shall be made at DTC, with the payment and other requisite actions to be taken at the place designated by the parties to this Purchase Agreement. The Series 2015 Notes shall be made available to the Underwriter at DTC at least forty-eight (48) hours before the Closing for the purpose of inspection and packaging; provided, that if DTC Fast delivery is used, then the Series 2015 Notes shall be made available to the Registrar by 4:00 p.m. on December 1, 2015. If the City does not have a Blanket DTC Letter of Representation (the "DTC Letter of Representations"), the City agrees to provide one to DTC.

5. The City represents and warrants to the Underwriter and agrees that:

(a) The City is a political subdivision and municipal corporation of the State of West Virginia located in Kanawha and Putnam Counties of said State. The City is duly authorized to operate and maintain the System and establish rates for the System. The Series 2015 Notes are being issued pursuant to the Constitution and laws of the State of West Virginia (the "State"), specifically, Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and the city has created the City of Nitro Utility Board (the "Board") to operate the System;

(b) The City shall have complied and will comply at the Closing in all respects with all applicable statutes and laws, including the Act;

(c) The City has full legal right, power and authority to issue notes and bonds for purposes provided in the Ordinance and to enter into this Purchase Agreement and the Indenture, and to enact the Ordinance and to issue, sell and deliver the Series 2015 Notes to the Underwriter as provided herein and to carry out and consummate all other transactions contemplated by each of the aforesaid documents;

(d) The information contained in the Preliminary Official Statement dated November 19, 2015, and in the Official Statement, is and, as of the Closing Date (as hereinafter defined), will be, to the best knowledge of the City, true and to the best knowledge of the City does not contain and will not contain any untrue statement of a material fact and does not omit and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(e) At the time of the City's acceptance hereof and (unless an event occurs of the nature described in subparagraph (i)) at all times during the period from the date of this Purchase Agreement to and including the date which is twenty-five (25) days following the End of the Underwriting Period for the respective series of Notes (as determined in accordance with subparagraph (i) hereof), to the best knowledge of the City, the Official Statement does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(f) If the Official Statement is supplemented or amended, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such subparagraph) at all times during the period from the date of this Purchase Agreement to and including the date which is twenty-five (25) days following the End of the Underwriting Period for the respective series of Notes (as determined in accordance with subparagraph (i) hereof), the Official Statement as so supplemented or amended, to the best knowledge of the City will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(g) If during the period from the date of this Purchase Agreement to and including the date which is twenty-five (25) days following the End of the Underwriting Period for the Series 2015 Notes (as determined in accordance with subparagraph (i) hereof) any event shall occur which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the City shall notify the Underwriter of any such event of which it has knowledge and, if in the opinion of the Underwriter such event requires the preparation and publication of a supplement or amendment to the Official Statement, the City will prepare and furnish to the Underwriter (i) a reasonable number of copies of the supplement or amendment to the Official Statement in form and substance approved by the City and acceptable to the Underwriter, and (ii) if such notification shall be subsequent to the Closing, such legal opinion, certification, instruments and other documents as the Underwriter may reasonably deem necessary to evidence the truth and accuracy of such supplement or amendment to the Official Statement;

(h) Prior to the City's acceptance hereof, the City delivered to the Underwriter copies of the Preliminary Official Statement which the City deemed final (for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934) as of the date thereof; provided, however, that in making the representation and warranty contained in this paragraph (h) the City shall not be deemed to have made any additional representation or warranty as to the Preliminary Official Statement other than the representation and warranty contained in paragraph (e);

(i) For purposes of this Purchase Agreement, the End of the Underwriting Period for the respective series of Notes shall mean the earlier of (1) the day of the Closing unless the City has been notified in writing by the Underwriter, on or prior to the day of the Closing, that the End of the Underwriting Period for the respective series of Notes for all purposes of Rule 15c2-12 of the Securities and Exchange Commission promulgated under the Securities Exchange Act of 1934 (the "Rule") will not occur on the day of the Closing, or (2) the date on which notice is given to the City by the Underwriter in accordance with the following sentence. In the event that the Underwriter has given notice to the City pursuant to clause (1) above that the End of the Underwriting Period for the respective series of Notes will not occur on the day of the Closing, the Underwriter agrees to notify the City in writing as soon as practicable following the "end of the underwriting period" for the respective series of Notes for all purposes of the Rule;

(j) At or prior to the Closing, the City shall have duly authorized, executed and delivered a written continuing disclosure undertaking (an "Undertaking") which complies with the provisions of Rule 15c2-12(b)(5) and which shall be substantially in the form described in the Preliminary Official Statement;

(k) The City has duly authorized all necessary action to be taken by it for: (1) the issuance and sale of the Series 2015 Notes upon the terms set forth herein, in the Ordinance, in the Indenture and in the Official Statement; (2) the execution and delivery of the Ordinance, the Indenture and the Undertaking; (3) the approval of the Official Statement and the execution, distribution and delivery of the Official Statement by the Mayor of the City; (4) the execution, delivery, receipt and due performance of this Purchase Agreement, the Series 2015 Notes, the Undertaking, the Ordinance, the Indenture and any and all such other agreements and documents as may be required to be executed, delivered and received by the City in order to carry out, give effect to and consummate the transactions contemplated hereby and by the Official Statement; and (5) the carrying out, giving effect to and consummation of the transactions contemplated hereby and by the Ordinance, the Indenture and the Official Statement;

(l) When delivered to and paid for by the Underwriter in accordance with the terms of this Purchase Agreement, the Series 2015 Notes will have been duly authorized, executed, authenticated, issued and delivered and will constitute valid and binding obligations of the City with the principal of the Series 2015 Notes payable solely from the CWSRF Bonds (not including the Series 2015 A CWSRF Bonds) and the interest on the Series 2015 Notes secured by the Surplus Revenues of the System, and will be entitled to the benefit of such security as pledged in the Ordinance. Neither the credit nor the taxing power of the City shall be deemed to be pledged to, nor shall a tax ever be levied for the payment of the principal of, premium, if any, or the interest on the Series 2015 Notes;

(m) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to our knowledge, threatened against or affecting the City (or, to the knowledge of the mayor as signatory hereto, any basis therefor) wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or by the Official Statement or the validity of the Series 2015 Notes, the Ordinance, the Indenture, the Undertaking, this Purchase Agreement or any agreement or instrument to which you are a party and which is used or contemplated hereby or by the Official Statement or the validity of the Series 2015 Notes, the Ordinance, the Indenture, this Purchase Agreement or any agreement or instrument to which you are a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or by the Official Statement;

(n) The execution and delivery of the Official Statement, this Purchase Agreement, the Series 2015 Notes, the Indenture, the Undertaking, the Ordinance and the other agreements contemplated hereby and by the Official Statement, and compliance with the provisions thereof, to the best of their knowledge following appropriate inquiry, will not conflict with or constitute on the City's part a breach of or a default under any existing law, court or administrative regulation, decree or order or any agreement, indenture, mortgage, lease or other instrument to which the City is subject or by which the City is or may be bound, and to our knowledge all consents, approvals, authorizations and orders of governmental or regulatory authorities which are required for the consummation of the transactions contemplated thereby have been obtained;

(o) The City has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the City is a bond issuer whose arbitrage certifications may not be relied upon;

(p) All financial statements of the City included as a part of the Preliminary Official Statement and the Official Statement (the "Financial Statements"), fairly present the financial condition of the System as of the respective dates and the results of its operations for the respective periods therein set forth and have been prepared when so indicated in accordance with generally accepted accounting principles consistently applied and since the respective most recent dates as of which information is given in the Preliminary Official Statement or the Official Statement, there has not been any material change in the long-term debt of the City or any material adverse change in the general affairs, management, financial position, or results of operations of the System and no material transactions or obligations other than in the ordinary course of business have been entered into with respect to the System by the City, except as reflected in or contemplated by the Official Statement;

(q) Any certificate signed by the Mayor of the City or any of the City's authorized officers and delivered to the Underwriter shall be deemed a representation and warranty by the City to the Underwriter as to the statements made therein. It is understood that the representations, warranties and covenants by the City contained in this Section 5 and elsewhere in this Purchase Agreement shall not create any general obligation or liability of the City, and that any obligation or liability of the City hereunder or under the Ordinance will be payable solely out of the proceeds of the CWSRF Bonds or Surplus Revenues, or other income,

charges and moneys derived by the City from, or in connection with the System, nor shall any member, official or employee of the City be personally liable therefor.

6. The Underwriter has entered into this Purchase Agreement in reliance upon the representations and agreements of the City made herein. The Underwriter's obligations under this Purchase Agreement are and shall be subject to the following further conditions:

(a) At or prior to the time of the Closing, the Ordinance, the Indenture and the Undertaking, as approved by the Underwriter or its counsel, shall have been approved by the appropriate parties, shall have been duly executed, acknowledged, sealed and delivered, shall be in full force and effect and shall not have been amended, modified or supplemented, except as therein permitted or as may have been agreed to in writing by the Underwriter;

(b) The Underwriter shall have the right to cancel its obligations hereunder to purchase the Series 2015 Notes (such cancellation shall not constitute a default hereunder) by notifying the City in writing of its election to do so between the date hereof and the Closing Date, if at any time hereafter and prior to the Closing Date:

(i) Any legislation, rule or regulation shall be introduced in, or enacted by, the United States House of Representatives or the United States Senate or any committee thereof, or a decision by a court established under Article III of the Constitution of the United States of America, or the Tax Court of the United States, shall be rendered, or a ruling, regulation or order of the Treasury Department of the United States or the Internal Revenue Service shall be made or proposed, which, in the Underwriter's reasonable opinion, materially adversely affects the market price of the Series 2015 Notes;

(ii) Any legislation, ordinance, rule or regulation shall be introduced in or enacted by any governmental body, department or agency of the State of West Virginia or political subdivision thereof, or a decision by any court of competent jurisdiction within the State of West Virginia shall have been rendered which, in the Underwriter's reasonable opinion, materially adversely affects the market price of the Series 2015 Notes;

(iii) A stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission or any other government agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering for sale of obligations of the general character of the Series 2015 Notes, or the issuance, offering or sale of the Series 2015 Notes, including all the underlying obligations, as contemplated hereby or by the Official Statement, is in violation of any provisions of the Securities Act of 1933, as amended and as then in effect, or the registration provisions of the Securities and Exchange Act of 1934, as amended and as then in effect, or the qualification provisions of the Trust Indenture Act of 1939, as amended and as then in effect;

(iv) Any event shall have occurred or information become known which, in the Underwriter's reasonable opinion, makes untrue in any material respect any statement or information contained in the Preliminary Official Statement or the Official Statement or the Underwriter shall have determined that the Preliminary Official Statement or the Official Statement contains an untrue statement of a material fact or omits to state a material

fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(v) A general banking moratorium shall have been established by Federal, New York State or West Virginia authorities;

(vi) In the reasonable opinion of the Underwriter, the market price of the Series 2015 Notes, or the market price generally of obligations of the general character of the Series 2015 Notes, has been adversely affected because (1) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange, (2) the New York Stock Exchange, other national securities exchange or any governmental authority shall have imposed as to the Series 2015 Notes or similar obligations any material restrictions not now in force, or increased materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriter, or (3) war or any outbreak of hostilities or other national or international calamity or crisis shall have occurred or any armed conflict shall have occurred or escalated to such a magnitude as in the reasonable opinion of the Underwriter to have a materially adverse effect on the ability of the Underwriter to market the Series 2015 Notes; or

(vii) There shall have been any materially adverse change in the affairs of the City; and

(c) At or prior to the Closing, the Underwriter and the City shall receive the following documents, in each case in form and substance satisfactory to us and our counsel:

(i) Opinion dated the date of the Closing and addressed to the City and the Underwriter, of Jackson Kelly PLLC, Bond Counsel, in substantially the forms attached as Appendix E to the Official Statement;

(ii) A supplemental bond counsel opinion, dated the date of the Closing and addressed to the Underwriter, of Jackson Kelly PLLC, Bond Counsel, to the effect that (1) this Purchase Agreement has been duly authorized, executed and delivered by, and (assuming due authorization, execution and delivery by the other parties and that it is a binding agreement of the other parties in accordance with its terms) constitutes a binding agreement in accordance with its terms of, the City; (2) the Series 2015 Notes are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Ordinance is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended; (3) the statements contained in the Official Statement under the caption "Tax Matters" are true and accurate in all material respects and presents a fair and accurate summary and description of the matters summarized and described under such caption; and (4) nothing has come to their attention which would lead them to believe that the statements contained in the Official Statement under the captions "Security for the Series 2015 Notes," (except for the statements referred to therein under "Appendix D - Book-Entry Only System" with respect to The Depository Trust Company), "Purpose and Plan of Finance," "Appendix E – Proposed Form of Opinion of Bond Counsel," and "Appendix F – Form of Ordinance and Notes Supplemental Resolution" insofar as such statements contained under such captions purport to summarize certain matters set forth

therein and certain provisions of the Ordinance, do not present fairly in all material respects the matters referred to therein;

(iii) An opinion, dated the date of Closing and addressed to the Underwriter, of Johnnie Brown, Esquire, Counsel to the City, to the effect that (1) the City is a political subdivision and municipal corporation of the State of West Virginia, (2) the City has complied with all requirements of the Act that must be satisfied in connection with the issuance of the Series 2015 Notes, (3) the City has all power and authority to operate the System, (4) the City has the power and authorization to set and enforce rates and the sewer rates and charges enacted by the City on November 19, 2013, and such rates are in full force and effect and not subject to appeal, (5) no litigation is pending, or to his knowledge, threatened in any court in any way affecting the existence of the City or the titles of its officers to their respective offices, or seeking to restrain or to enjoin the issuance or delivery of the Series 2015 Notes, or the issuance, and pledge of the proceeds of the CWSRF Bonds, or the pledge of the Surplus Revenues of the System to pay the interest on the Series 2015 Notes, or in any way contesting or affecting the validity or enforceability of the Series 2015 Notes, the Ordinance, the Indenture or this Purchase Agreement, or contesting the powers of the City with respect to the Series 2015 Notes, the Ordinance, the Undertaking or this Purchase Agreement or any transaction described in or contemplated by the Official Statement, (6) that the Official Statement, as amended or supplemented to the date of Closing (except as aforesaid) contains no untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein regarding the City, in light of the circumstances under which they were made, not misleading, and (7) the statements contained in the Official Statement under the captions "Litigation," "The System and the Utility Board," "Purpose and Financing Plan," and "Appendix B – The System and the Utility Board," insofar as such statements contained under such captions purport to summarize certain matters set forth therein and certain provisions of the Ordinance, are accurate and present a fair summary of the matters referred to therein;

(iv) Two counterpart originals of a transcript of all proceedings relating to the authorization and issuance of the Series 2015 Notes;

(v) An opinion, dated the date of the Closing and addressed to the Underwriter, of Steptoe & Johnson PLLC, Underwriter's Counsel, to the effect that (1) this Purchase Agreement has been duly authorized, executed and delivered by, and (assuming due authorization, execution and delivery by the other parties and that it is a binding agreement of the other parties in accordance with its terms) constitutes a binding agreement in accordance with its terms of, the Underwriter; (2) the Undertaking complies as to form in all material respects with the requirements of paragraph (b)(5) of the Rule; and (3) with respect to the Official Statement that no facts have come to their attention that the Official Statement contains any untrue statements of a material fact or omits to state any material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(vi) A certificate, satisfactory to the Underwriter, of the Mayor of the City or any other duly authorized officer of the City satisfactory to the Underwriter, dated as of the Closing, to the effect that: (1) the City has duly performed all of the obligations to be performed at or prior to the Closing and that each of the representations and warranties contained

herein are true as of Closing, (2) the City has authorized, by all necessary action, the execution, delivery, receipt and due performance of the Series 2015 Notes, the Undertaking, the Ordinance, the Indenture and any and all such other agreements and documents as may be required to be executed, delivered and received by the City in order to carry out, give effect to and consummate the transactions contemplated hereby and by the Official Statement, (3) to the knowledge of such signatory no litigation is pending, or to his or her knowledge threatened, to restrain or enjoin the collection of the Surplus Revenues, the pledge of the Surplus Revenues to the Series 2015 Notes, the issuance or sale of the Series 2015 Notes, the issuance and sale of the CWSRF Bonds or in any way affecting any authority for or the validity of the Series 2015 Notes or the Ordinance, (4) to the best of his or her knowledge following appropriate inquiry, the execution, delivery, receipt and due performance of the Series 2015 Notes, the Undertaking, the Ordinances and the other agreements contemplated hereby and by the Official Statement under the circumstances contemplated thereby and the City's compliance with the provisions thereof will not conflict with or constitute on the City's part a breach of or a default under any existing law, court or administrative regulation, decree or order or any agreement, indenture, mortgage, lease or other instrument to which the City is subject or by which the City is or may be bound and (5) he or she is not are aware of any material non-compliance with the covenants in all outstanding ordinances which authorized bonds secured by the any Revenues of the System;

(viii) Copies of this Purchase Agreement executed by the parties thereto;

(ix) Duly authorized and executed copies of the Undertaking, in substantially the form attached as Appendix H to the Official Statement and incorporated herein, which complies with the provisions of Rule 15c2-12(b)(5) in form and substance satisfactory to the Underwriter;

(x) A certificate of the City executed by authorized officers thereof, dated the Closing Date and in form and substance satisfactory to the Underwriter and counsel to the Underwriter, to the effect that the City is obligated by such Undertaking and except as provided in the Official Statement is in full compliance with all of the City's prior written continuing disclosure undertakings entered into pursuant to the provisions of Rule 15c2-12(b)(5);

(xi) A certificate from an independent certified public accountant, stating that the City has Net Revenues sufficient to meet the coverage and parity requirements of the Prior Ordinances;

(xii) A Certificate of the Registrar to the effect that all conditions precedent contained in the Ordinance for the issuance of the Series 2015 Notes have been met, and the Series 2015 Notes are entitled to the benefit and security of the Ordinance;

(xiii) The Ordinance, certified by the City Recorder under the seal of the City, as having been duly enacted by the City and as being in full force and effect, with only such amendments, modifications or supplements as may have been agreed to by the Underwriter;

(xiv) With respect to the Series 2015 Notes, an Information Return for Tax-Exempt Bond Issues (Internal Revenue Service Form 8038-G), in the form satisfactory to Bond Counsel for filing, executed by the duly authorized officer of the City and evidence that the



City has adopted post issuance compliance guidelines sufficient to allow the City to check boxes 43 and 44 on Form 8038-G;

(xv) [RESERVED];

(xvi) A tax and arbitrage certificate of the City;

(xvii) A consent from the holders of the Prior Bonds to the issuance of the Series 2015 Notes subordinate to the Prior Bonds, if required;

(xviii) Such additional legal opinions, certificates, instruments and other documents as the Underwriter or its counsel, Steptoe & Johnson PLLC, reasonably may deem necessary or advisable to evidence the truth and accuracy, as of the date hereof and as of the date of the Closing, of the City's representations and warranties contained herein and of the statements and information contained in the Official Statement and the due performance or satisfaction by the City on or prior to the date of the Closing of all agreements then to be performed and all conditions then to be satisfied by the City;

All of the opinions, letters, instruments and other documents mentioned above or elsewhere in this Purchase Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Underwriter and to Steptoe & Johnson PLLC, counsel to the Underwriter.

If the City shall be unable to satisfy or cause to be satisfied the conditions to the Underwriter's obligations in this Purchase Agreement or if the Underwriter's obligations shall be terminated for any reason permitted by this Purchase Agreement, this Purchase Agreement shall terminate and the Underwriter and the City shall not have any further obligations, claims or rights hereunder. However, the Underwriter may in its discretion waive in writing one or more conditions imposed by this Purchase Agreement for the protection of the Underwriter and proceed with the Closing.

7. The Underwriter shall be under no obligation to pay, and, if the Series 2015 Notes are issued, the City shall pay or cause to be paid from the proceeds of the Series 2015 Notes or other funds of the City, any fees and expenses incident to the performance of the City's obligations hereunder including (i) all expenses in connection with the printing and distribution of the Preliminary Official Statement, the Official Statement and any amendment or supplement to either; (ii) all expenses in connection with the preparation, printing, issuance and delivery of the Series 2015 Notes; (iii) the fees and disbursements of Jackson Kelly PLLC, Bond Counsel; (iv) all advertising expenses in connection with the public offering of the Series 2015 Notes; (v) the fees and disbursements of the Registrar including legal fees of legal counsel, if any; (vi) the fees and disbursements of the Trustee; (vii) the fees and expenses of Counsel to the Underwriter; (viii) the fees and expenses of the accountant; (ix) all other expenses and costs (including the fees and expenses of the City) for the authorization, issuance, sale and distribution of the Series 2015 Notes.

8. The Underwriter shall pay from the underwriting spread all expenses incurred by it in connection with its public offering and distribution of the Series 2015 Notes, including all out-of-pocket expenses, travel and other expenses and filing fees.

9. For so long as the Underwriter, or dealers or banks, if any, participating in the distribution of the Series 2015 Notes, is offering the Series 2015 Notes which constitute the whole or a part of its unsold participations, the City will: (a) not adopt any amendment of or supplement to the Official Statement to which, after having been furnished with a copy, the Underwriter shall object in writing or which shall be disapproved by Counsel for the Underwriter, unless, in the opinion of the Counsel to the City, such amendment or supplement is required to make the Official Statement not misleading, and (b) if any event relating to or affecting the City shall occur as a result of which it is necessary, in the opinion of Bond Counsel or Counsel for the Underwriter, to amend or supplement the Official Statement in order to make the Official Statement not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, forthwith prepare and furnish to the Underwriter a reasonable number of copies of an amendment or a supplement to the Official Statement (in form and substance satisfactory to the Counsel for the Underwriter) which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to a purchaser, not misleading. The expense of preparing such amendment or supplement shall be borne by the City. For the purposes of this paragraph, the City will furnish such information with respect to themselves as the Underwriter from time to time may request.

10. Neither the officials of the City nor its employees shall be personally liable for breach of any representation, agreement or warranty made by the City within this Purchase Agreement.

11. Any notice or other communication to be given under this Purchase Agreement may be given by delivering the same in writing as follows:

To the City:

City of Nitro  
2009 20th Street  
Nitro, West Virginia 25143  
Attention: Mayor

To the Underwriter:

Crews & Associates, Inc.  
300 Summers Street  
Suite 930  
Charleston, WV 25301

12. This Purchase Agreement is made solely for the benefit of the City and the Underwriter (including the successors or assigns of the Underwriter) and no other person, partnership, association or corporation shall acquire or have any right hereunder or by virtue hereof. All agreements of the City in this Purchase Agreement shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Underwriter and shall survive the delivery of and payment for the Series 2015 Notes.

13. This Purchase Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

14. The approval of the Underwriter when required hereunder or the determination of its satisfaction with any document referred to herein shall be in writing signed by the Representative and delivered to the City. This Purchase Agreement shall become legally effective upon its acceptance by the City, as evidenced by the signature of the Mayor of the City in the space provided hereinafter therefor.

Crews & Associates, Inc.

By:   
Its: Senior Managing Director

ACCEPTED AND APPROVED:

\_\_\_\_\_, 2015 at \_\_\_\_\_ a.m./p.m.

City of Nitro, West Virginia

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

Crews & Associates, Inc.

By: \_\_\_\_\_  
Its: Senior Managing Director

ACCEPTED AND APPROVED:

Nov. 24, 2015 at 1:54 ~~pm~~ p.m.

City of Nitro, West Virginia

By: David Corbett  
Its: Mayor

EXHIBIT A

**CITY OF NITRO (WEST VIRGINIA)  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES**

**Maturities, Amounts, Interest Rates, Prices & CUSIPS**

<b>Maturity (January 1)</b>	<b>Amount</b>	<b>Interest Rate</b>	<b>Price</b>	<b>CUSIP</b>
2017	\$2,000,000	1.250%	100.00%	654795 BH5
2018	\$2,000,000	1.750%	100.00%	654795 BJ1
2019	\$2,735,000	2.250%	100.00%	654795 BK8

**NOTES TRUST INDENTURE**

**by and between**

**CITY OF NITRO, WEST VIRGINIA**

**and**

**THE HUNTINGTON NATIONAL BANK.  
as Trustee**

**Dated December 3, 2015**

**\$6,735,000**

**City of Nitro, West Virginia  
Sewerage System Bond Anticipation Notes, Series 2015**

## NOTES TRUST INDENTURE

**THIS NOTES TRUST INDENTURE** (the “**Indenture**”) dated December 3, 2015, is by and between the **CITY OF NITRO, WEST VIRGINIA** (the “**Issuer**”), a municipal corporation and political subdivision of the State of West Virginia, and **THE HUNTINGTON NATIONAL BANK**, a national banking association, Cincinnati, Ohio, as trustee (the “**Trustee**”).

### RECITALS

**WHEREAS**, pursuant to Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the “**Act**”), and a Bond and Note Ordinance adopted by the City Council (the “**Council**”) of the Issuer on October 20, 2015, effective November 17, 2015 as supplemented by a Notes Supplemental Parameters Resolution adopted by the Council on November 17, 2015, the Issuer is issuing \$6,735,000 in principal amount of its Sewerage System Bond Anticipation Notes, Series 2015 (the “**Notes**”), to fund the acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system, as hereinafter defined (the “**Project**”), consisting of the a sewage treatment plant or plants and its collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations and ejector stations and all other appurtenances, extensions, improvements and betterments necessary, appropriate, useful, convenient or incidental for the collection, treatment, purification and disposal in a sanitary manner of liquid and solid waste, sewage and industrial waste (the “**System**”);

**WHEREAS**, the Isser has received a commitment letter from the West Virginia Department of Environmental Protection that it will authorize the West Virginia Water Development Authority to purchase \$7,204,821 of bonds over a three year period to take out the Notes (the “**Takeout Bonds**”);

**WHEREAS**, the proceeds of the Takeout Bonds will be deposited with the West Virginia Municipal Bond Commission, as paying agent for the Notes;

**WHEREAS**, as further provided in the Act, the Notes are special obligations of the Issuer payable from the moneys and securities held in the Construction Trust Fund, the proceeds of the Takeout Bonds and certain funds and accounts described or created herein, and shall not constitute a general obligation debt of the Issuer or pledge of the Issuer’s full faith and credit or taxing power;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which are hereby acknowledged by both parties hereto, the Issuer and the Trustee agree as follows:

### GRANTING CLAUSES

The Issuer, in consideration of the premises, of the acceptance by the Trustee of the trusts hereby created, of the purchase and acceptance of the Notes by the owners thereof and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal or Redemption Price (defined herein) of and interest on the



Notes according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Notes, does hereby grant, bargain, sell, convey, assign and pledge, and grant a security interest in, the following to the Trustee and its successors in trust and assigns forever, subject only to the provisions of this Indenture permitting the application thereof on the terms and conditions set forth in this Indenture:

#### **GRANTING CLAUSE FIRST**

All of the right, title and interest of the Issuer in and to (i) the Construction Trust Fund and (ii) all moneys and securities from time to time held by the Trustee in any fund or account under the terms of this Indenture (except moneys and securities in the Costs of Issuance Fund and the Rebate Fund);

#### **GRANTING CLAUSE SECOND**

All of the right, title and interest of the Issuer in and to any and all other property of every name and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security hereunder by the Issuer or by anyone on its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof (all of the property conveyed by the foregoing granting clauses being herein referred to as the “Trust Estate”);

**TO HAVE AND TO HOLD** all and singular the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its respective successors in trust and assigns forever upon the terms and trusts herein set forth for the equal and ratable benefit, protection and security of the owners of the Notes;

**PROVIDED, HOWEVER**, that if the Issuer shall well and truly pay, or cause to be paid, the principal or Redemption Price of and interest on the Notes according to the true intent and meaning thereof, or shall provide for the payment thereof as permitted by Article VIII, and shall perform and observe all the covenants and conditions of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then, upon compliance with Article VIII, the lien of this Indenture shall be discharged and satisfied; otherwise this Indenture shall be and remain in full force and effect.

The Issuer hereby acknowledges and confirms unto the Trustee the statutory lien granted by the Act.

All Notes issued and secured hereunder are to be issued, authenticated and delivered and all such property, rights and interest, including (without limitation) the amounts hereby assigned and pledged, are to be dealt with and disposed of under, upon and subject to the terms and conditions hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant

with the Trustee and with the respective owners of the Notes as follows (subject, however, to the provisions of Section 5.01):

## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

**Section 1.01. Definitions.** Terms used in this Indenture shall have the meanings set forth below, unless a different meaning clearly appears from the context. Additional terms are defined in this Indenture as they are used.

“**Act**” means Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended.

“**Administrative Expenses**” means costs directly related to the administration of the Project, consisting of the costs of maintaining the Construction Trust Fund and remitting payments to the Trustee; fees and costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under this Indenture; fees and costs of the Issuer (including its legal counsel) in the discharge of the duties required of it under this Indenture; any amounts required to be rebated to the United States of America to comply with Section 4.07 hereof; and an allocable share of the salaries of the Issuer’s staff directly related to the foregoing and a proportionate amount of Issuer general administrative overhead related thereto. Administrative Expenses shall also include amounts advanced by the Issuer for any administrative costs of the Notes, including, but not limited to, costs of credit enhancement, financial, tax and other professional consultants and amounts expended to ensure compliance with Sections 5.06 and 5.11 hereof.

“**Authorized Denominations**” means, with respect to the Notes, \$5,000 and increments of \$5,000 in excess thereof.

“**Authorized Officer**” means, with respect to the Issuer, the Mayor or such other officer or officers as shall be designated by the Issuer, all for the purpose of executing notices, certificates and other documents delivered in connection with this Indenture.

“**Bond Counsel**” means any attorney or firm of attorneys selected by the Issuer and nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities, and initially is Jackson Kelly PLLC.

“**Business Day**” means any day other than a Saturday, Sunday or legal holiday in the State of West Virginia observed as such by the Issuer or the Trustee.

“**Cede & Co.**” means the nominee of DTC, as further described in Section 2.03.

“**City Council**” means the City Council of the Issuer and any successor to the functions hereof.

**“Code”** means the Internal Revenue Code of 1986, as in effect on the date of issuance of the Notes and as it may be amended to apply to any Notes, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published under the Code.

**“Construction Trust Fund”** means the fund by that name created by Section 4.01 hereof.

**“Costs of Issuance”** means items of expense permitted under the Act, payable or reimbursable directly or indirectly by the Issuer related to the authorization, sale and issuance of the Notes.

**“Costs of Issuance Fund”** means the fund by that name created by Section 4.01 hereof.

**“Date of Issue”** means the date of issuance and delivery of the Notes to the Original Purchasers, being December 3, 2015.

**“Debt Service Fund”** means the fund by that name created by Section 4.01 hereof.

**“Defeasance Obligations”** means:

- (a) Government Obligations which are not subject to redemption prior to maturity; or
- (b) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with Government Obligations).

**“DTC”** means The Depository Trust Company, New York, New York.

**“Event of Default”** has the meaning given it in Section 5.10.

**“Favorable Opinion of Bond Counsel”** means, when used with respect to or in connection with any action, a written opinion of Bond Counsel to the effect that such action will not adversely affect the excludability from gross income, for federal income tax purposes, of interest paid on any Tax-Exempt Notes theretofore issued.

**“Fiscal Year”** means the Issuer’s fiscal year, which is currently July 1 to June 30 of the succeeding year, both dates inclusive, or as it may hereafter be determined by the Issuer.

**“Government Obligations”** means direct obligations of, or obligations the timely payment of the principal of and the interest on which are unconditionally guaranteed by, the United States of America, including (without limitation) obligations of the Resolution Trust Corporation.

**“Indenture”** means this Note Trust Indenture, as it may be amended or supplemented from time to time by any Supplemental Indenture entered pursuant to the provisions hereof.

**“Interest Payment Dates”** means January 1 and July 1 of each year, commencing July 1, 2016, with respect to the Notes.

“**Issuer**” or “**City**” means the City of Nitro, West Virginia, a municipal corporation and political subdivision of the State of West Virginia.

“**Maximum Annual Debt Service**” means, as of any date of calculation, the largest Annual Debt Service for the then-current Fiscal Year or any Fiscal Year after such date of calculation.

“**Note Authorizing Ordinance**” means the Ordinance adopted by the City Council on October 20, 2015, effective November 17, 2015, authorizing the issuance, sale and delivery of the Notes, as supplemented by a supplemental resolution adopted by the City Council on November 17, 2015, and including the Certificate of Determination executed by the Mayor of the Issuer in accordance with the Ordinance.

“**Note Register**” means the books for the registration and transfer of Notes maintained by the Trustee under Section 2.07.

“**Noteholder**,” “**Owner**,” “**Holder**” and similar terms mean any person who is the registered owner of any Outstanding Note.

“**Notes**” means the City of Nitro Sewerage System Bond Anticipation Notes, Series 2015, authorized to be issued under Section 2.01 hereof.

“**Officer’s Certificate**” means a written certificate of the Issuer signed by an Authorized Officer.

“**Opinion of Bond Counsel**” means a written opinion of any legal counsel acceptable to the Issuer and the Trustee who shall be nationally recognized as expert in matters pertaining to the validity of obligations of governmental issuers and the excludability for federal income tax purposes of interest on such obligations.

“**Opinion of Counsel**” means a written opinion in the form described in Section 9.04 hereof of any legal counsel acceptable to the Issuer and the Trustee, who may be an employee of or counsel to the Trustee or the Issuer.

“**Original Purchaser**” means Crews & Associates, Inc.

“**Outstanding**” or “**outstanding**” means, as of any particular date, all Notes authenticated and delivered under the Indenture except (a) any Note canceled by the Trustee (or delivered to the Trustee for cancellation) at or before such date, (b) any Note that has been paid or discharged pursuant to Section 8.01 of this Indenture and (c) any Note in lieu of or in substitution for which a new Note shall have been authenticated and delivered pursuant to Article II.

“**Paying Agent**” means the West Virginia Municipal Bond Commission.

**“Permitted Investments”** means those investments that are authorized by the Act or other applicable provisions of law for funds in the Construction Trust Fund or otherwise derived pursuant to the Act, as set forth in **Appendix I** hereto. Investment in an undivided interest in a money market or similar fund comprised solely of Permitted Investments shall constitute a Permitted Investment. For the avoidance of doubt, the Federated Government Obligations Fund and any successor thereto customarily used by the Trustee for investment of funds similar to those established by this Indenture shall constitute a Permitted Investment.

**“Person”** means any natural person, firm, joint venture, association, partnership, business trust, corporation, limited liability company, organization, business, public or governmental body, agency or political subdivision thereof, or any other similar entity.

**“Project”** means the design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City, including: the extension of service to approximately 94 customers in the Blakes Creek and Eastwood Acres areas; the replacement of sewer lines on Bailes Drive; the replacement of Pump Station No. 6; the installation of telemetry at eight major pump stations; the installation of storm sewers in the Pump Station No. 7 drainage area; relining existing 42 inch clay tile brick sewer line through Board of Education property and rehabilitation of manholes; replacement of existing belt filter press with a new, larger press; replacement of existing sewer line on Reeves Drive; relocation of approximately 200 hundred linear feet of the existing eight-inch force mains at the Poca High School pump station and all appurtenances necessary therefor.

**“Rebate Fund”** means the fund by that name created by Section 4.01 hereof.

**“Recorder”** means the Recorder of the Issuer.

**“Redemption Price”** means, when used with respect to any Note or portion thereof, the principal amount of such Note or such portion thereof plus the applicable premium, if any, payable upon redemption thereof pursuant to this Indenture.

**“Registrar”** means the Trustee its capacity as Note registrar under this Indenture.

**“Regular Record Date”** means the 15<sup>th</sup> day (whether or not a Business Day) of the calendar month next preceding the month in which an interest payment on any Note is to be made.

**“Series”** means any series of Notes issued hereunder.

**“State”** means the State of West Virginia.

**“Supplemental Indenture”** means any indenture supplemental or amendatory to this Indenture entered into by the Issuer and the Trustee pursuant to Article VII of this Indenture.

**“Tax Certificate”** means the Tax and Non-Arbitrage Certificate of the Issuer.

“**Tax-Exempt Notes**” means the Notes with respect to which there shall have been delivered to the Issuer an opinion of Bond Counsel to the effect that the interest on such Notes is excludable from gross income for federal income tax purposes.

“**Trustee**” means The Huntington National Bank and its successors, and any other corporation that may at any time be substituted in its place as provided in Section 6.10.

“**Trust Estate**” means the Trust Estate described in the Granting Clauses of this Indenture.

“**Utility Board**” means the Utility Board of the City in accordance with Section 2 of the Act and maintains supervision and control over the System.

**Section 1.02. Rules of Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Indenture:

A. Words importing the singular number include the plural number and words importing the plural number include the singular number.

B. Words of the masculine gender include correlative words of the feminine and neuter genders.

C. The headings and the table of contents set forth in this Indenture are solely for convenience of reference and shall not constitute a part of this Indenture, and they shall not affect its meaning, construction or effect.

D. Words importing persons include any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or agency or political subdivision thereof.

E. Any reference to a particular percentage or proportion of the holders of Notes shall mean the holders at the particular time of the specified percentage or proportion in aggregate principal amount of all Notes then Outstanding under this Indenture, except Notes held by or for the account of the Issuer, whether or not pledged to or by the Issuer; however, Notes so pledged may be regarded as Outstanding for the purposes of this paragraph if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right to vote such Notes. Any reference herein to Notes the consent or direction of a specified proportion of the holders of which is required or permitted prior to the taking of any action hereunder shall mean the holders of such proportion of Outstanding Notes as shall be affected thereby.

F. Any reference to the Revenue Fund, the Costs of Issuance Fund, the Debt Service Fund, and the Rebate Fund shall be to the fund or account so designated that is created under Article IV. If any Supplemental Indenture provides for the establishment of separate funds and accounts for any Series of Notes, then any provision of this Indenture requiring or permitting the application of amounts on deposit in any fund or account to the payment of any Note or the transfer of amounts on

deposit in any fund or account maintained for any Notes to any other fund or account shall refer to the fund or account maintained for such Notes.

G. Any reference to a particular Article or Section shall be to such Article or Section of this Indenture unless the context shall require otherwise.

## ARTICLE II

### AUTHORIZATION AND DETAILS OF THE NOTES

**Section 2.01. Notes Authorized.** There is hereby authorized under this Indenture the issuance of Notes in the aggregate principal amount of \$6,735,000, which shall be designated “City of Nitro Sewerage System Bond Anticipation Notes, Series 2015, for the purpose of financing the Project and paying Costs of Issuance of the Notes and other costs relating thereto.

**Section 2.02. Details of Notes; Form of Notes.** The Notes shall be issued as fully registered notes in Authorized Denominations. The Notes delivered to the Original Purchasers on the Issue Date shall be (i) dated the Issue Date, (ii) registered to Cede & Co., as further described in Section 2.03, issued as one Note certificate for each maturity, and (iv) have the following numbers, principal amounts, maturities and, interest rates:

<u>Note Number</u>	<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Interest Rate</u>
NR-1	\$2,000,000	1/1/2017	1.250%
NR-2	\$2,000,000	1/1/2018	1.750%
NR-3	\$2,735,000	1/1/2019	2.250%

The Notes shall bear interest from their date at the rates set forth above (computed on the basis of a year of 360 days (12 months of 30 days)), until payment of principal has been made or provided for, payable on each Interest Payment Date commencing July 1, 2016, except that Notes which are reissued upon transfer, exchange or other replacement shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, or if no interest has been paid, from the date of the Notes.

The principal of the Notes shall be payable in lawful money of the United States of America at the address of the Noteholder set forth in the Note Register, with the final payment to be made only upon delivery of the Notes to the Registrar for cancellation. Payment of interest on any Notes shall be made on each Interest Payment Date to the Noteholder at the close of business on the Regular Record Date for such Interest Payment Date by check or draft mailed to the person who is the registered owner of such Notes and at the address appearing on the Note Register at the close of business on the Regular Record Date pertaining to such Interest Payment Date, or at the option of any Registered Owner of \$1,000,000 or more of the Seires 2015 Notes, by wire transfer to a domestic bank account specified in writing at least 5 days prior to the Record Date by such Registered Owner.

If and to the extent the Issuer shall default in the payment or provision for payment of interest on any Notes on any Interest Payment Date, such interest in default shall cease to be payable to the person who was the registered owner of such Notes as of the Regular Record Date. Whenever moneys become available for the payment of such defaulted interest, the Registrar shall establish a Special Record Date for the payment of such defaulted interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment, and the Registrar shall cause notice of the proposed payment and of such Special Record Date to be mailed by first class mail, postage prepaid, to the Noteholder at its address as it appears on the Note Register not less than 10 days prior to such Special Record Date. Such notice having been so mailed, the defaulted interest shall be payable to the persons who are the registered owners of the Notes (or their respective predecessor Notes) at the close of business on such Special Record Date.

The Notes shall be subject to redemption prior to maturity in accordance with Section 3.01, and shall otherwise have the terms, tenor, details and specifications as set forth in the form of Notes attached hereto as **Exhibit A - Form of Notes**.

The principal of the Notes shall not be subject to acceleration, provided that nothing in this Section shall in any way prohibit the prepayment or redemption of Notes under Article III, or the defeasance of the Notes and discharge of this Indenture under Section 8.01.

The Notes shall be substantially in the form set forth in **Exhibit A** attached hereto and made a part hereof, with such insertions, omissions and variations as may be deemed necessary or appropriate by an Authorized Officer of the Issuer executing the same and as shall be permitted by the Act. The Issuer hereby adopts the form of the Notes set forth in **Exhibit A**, and all of the covenants and conditions set forth therein, as and for the form of obligation to be incurred by the Issuer as the Notes. The covenants and conditions set forth in such form are incorporated into this Indenture by reference and shall be binding upon the Issuer as though set forth in full herein.

### **Section 2.03. Book-Entry Notes.**

A. Except (i) as provided in subsection (C) of this Section 2.03 or (ii) as set forth in the applicable Supplemental Indenture for a Series of Notes, the registered owner of the Notes shall be Cede & Co., as nominee of DTC. Payment of interest for any Notes registered as of each Record Date in the name of Cede & Co. shall be made by wire transfer to the account of Cede & Co. on the Interest Payment Date for the Notes at the address indicated on the Record Date for Cede & Co. in the records of the Registrar.

B. Each Series of Notes shall initially be issued in the form of separate single authenticated fully registered Notes in the principal amount of each separate stated maturity of the Notes of such Series. Upon initial issuance, the ownership of each such Note shall be registered in the Note Register in the name of Cede & Co., as nominee of DTC. The Trustee and the Issuer may treat DTC (or its nominee) as the sole and exclusive owner of the Notes registered in its name for the purposes of payment of the principal or Redemption Price of or interest on the Notes, giving any notice permitted or required to be given to Owners under this Indenture, registering the transfer of Notes, obtaining any consent or other action to be taken by Owners and for all other purposes



whatsoever; and neither the Trustee nor the Issuer shall be affected by any notice to the contrary. Neither the Trustee nor the Issuer shall have any responsibility or obligation to any DTC participant, any person claiming a beneficial ownership interest in the Notes under or through DTC or any DTC participant, or any other person which is not shown on the Note Register as being an Owner with respect to the accuracy of any records maintained by DTC, Cede & Co. or any DTC participant to any beneficial owner of any amount in respect of the principal of or interest on the Notes; the delivery to any DTC participant or any interest on the Notes; the delivery to any DTC participant or any beneficial owner of any notice which is permitted or required to be given to Owners under this Indenture; the selection by DTC or any DTC participant of any person to receive payment in the event of a partial payment of the Notes; or any consent given or other action taken by DTC as Owner. The Paying Agent shall pay all principal or Redemption Price of and interest on the Notes only to or "upon the order of" (as that term is used in the Uniform Commercial Code as adopted in the State of West Virginia) Cede & Co., as nominee of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal or Redemption Price of and interest on the Notes to the extent of the sum or sums so paid. Upon delivery by DTC to the Trustee of written notice to the effect that DTC had determined to substitute a new nominee in place of Cede & Co., and subject to the provisions herein with respect to record dates, the word "Cede & Co." in this Indenture shall refer to such new nominee of DTC.

C. In the event that (i) DTC determines not to act as securities depository for the Notes; or (ii) the Issuer advises DTC of its determination that DTC is incapable of discharging its duties; or (iii) the Issuer determines that it is in the best interest of the beneficial owners of the Notes that they be able to obtain Note certificates, the Issuer shall, if the event is triggered by either (i) or (ii) above, attempt to locate another qualified securities depository. If the Issuer fails to locate such a replacement, then it shall notify DTC and the Trustee, requesting DTC to notify its participants, of the availability through DTC of Note certificates. In any such event, the Trustee shall issue, transfer and exchange, Note certificates as requested by DTC and any other Owners in appropriate amounts. The Issuer and the Trustee shall be obligated to deliver Note certificates as described in this Indenture. In the event Note certificates are issued to Owners other than DTC, the provisions of this Indenture shall apply to, among other things, the transfer and exchange of such certificates and the method of payment of principal of and interest on such Note certificates. Whenever DTC requests the Issuer and the Trustee to do so, the Trustee and the Issuer will cooperate with DTC in taking appropriate action after reasonable notice (a) to make available one or more separate certificates evidencing the Notes of any Series to any DTC participant having Notes credited to its DTC account or (b) to arrange for another securities depository to maintain custody of certificates evidencing the Notes.

D. Notwithstanding any other provision of this Indenture to the contrary, so long as any Note is registered in the name of Cede & Co., as nominee of DTC, all payment, with respect to the principal of and interest on such Note and all notices with respect to such Note, shall be made and given to DTC as provided in the Representation Letter.

E. In connection with any notice or any communication to be provided to Owners pursuant to this Indenture by the Issuer or the Trustee with respect to any consent or other action to be taken by Owners, so long as any Note is registered in the name of Cede & Co., as nominee of

DTC, the Issuer or the Trustee, as the case may be, shall establish a record date for such consent or other action and give DTC notice of such record date not less than 15 calendar days in advance of such record date to the extent possible.

F. Upon the written request of the Issuer, submitted to the Trustee, that the Trustee substitute another securities depository company (qualified to act as such under section 12(a) of the Securities Exchange Act of 1934) for DTC, or appoint a successor securities depository (qualified to act as such under section 12(a) of the Securities Exchange Act of 1934) upon the discontinuance of service by DTC, the Trustee shall immediately request that DTC transfer its custodial records to the successor securities depository and the Notes to the Trustee and to take all other actions deemed necessary or appropriate by the Trustee to effectuate the transfer of the services from DTC to another securities depository company.

**Section 2.04. Conditions Precedent to Delivery of Notes.** The Notes shall be executed by the Issuer and delivered to the Trustee, whereupon the Trustee, as Registrar, shall authenticate the Notes and, upon payment of the purchase price of the Notes, shall deliver the Notes upon the order of the Issuer, but only upon delivery to the Trustee of:

- A. A copy, certified by the Recorder of the Issuer, of the Note Authorizing Ordinance;
- B. An original executed counterpart of this Indenture;
- C. A request and authorization to the Trustee on behalf of the Issuer, executed by an Authorized Officer, to authenticate the Notes and deliver said Notes to the Original Purchasers therein identified upon payment to the Trustee, for the account of the Issuer, of the purchase price thereof. The Trustee shall be entitled to rely conclusively upon such request and authorization as to the names of the purchasers and the amounts of such purchase price;
- D. An Opinion of Bond Counsel, dated the date of original issuance of the Notes; and
- E. Such other certificates, statements, opinions, receipts and documents as the Trustee shall reasonably require for the delivery of the Notes.

When the documents specified above have been filed with the Trustee, and when the Notes shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver the Notes to the Original Purchasers thereof, but only upon payment to the Issuer of the purchase price of the Notes. As long as any of the Notes are outstanding, the Issuer should only issue bonds to make payments on the Notes.

**Section 2.06. Execution and Authentication.** The Notes shall be executed in the name and on behalf of the Issuer by the manual or facsimile signature of its Mayor, sealed with its corporate seal (or a facsimile thereof) and attested by the manual or facsimile signature of its Recorder. In case the Mayor or Recorder of the Issuer whose manual or facsimile signature appears on the Notes shall cease to be such officer before delivery of such Notes, such signature, nevertheless, shall, provided that all conditions precedent to the issuance of such Notes have been satisfied, be valid and sufficient

for all purposes as if such officer had remained in office until such delivery, and the Issuer may adopt and use for the execution of Notes the manual or the facsimile signature of any person who shall have been at the time the proper officer to execute such Notes, notwithstanding the fact that such person may not have been such officer on the date of such Notes or that such person may have ceased to be such officer at the time when such Notes shall be actually authenticated and delivered.

No Note shall be valid or obligatory for any purpose or entitled to any right or benefit hereunder unless there shall be endorsed on such Note a certificate of authentication substantially in the form set forth in **Exhibit A** attached to this Indenture and made a part hereof or the form set forth in the Supplemental Indenture authorizing the issuance thereof (as the case may be), duly executed by the Trustee, and such certificate of the Trustee upon any Note executed on behalf of the Issuer shall be conclusive evidence and the only evidence required that the Note so authenticated has been duly issued hereunder and that the Noteholder thereof is entitled to the benefits of this Indenture. The certificate of the Trustee may be executed by any authorized signatory of the Trustee.

**Section 2.07. Registration, Transfer and Exchange.** The Trustee shall cause to be kept at its principal corporate trust office a register (referred to herein as the “**Note Register**”) in which, subject to such reasonable regulations as it may prescribe, the Trustee shall provide for the registration, transfer and exchange of Notes as herein provided. The Trustee is hereby appointed “Registrar” for the purpose of registering Notes and transfers of Notes as herein provided.

Notes may be transferred or exchanged only upon the Note Register maintained by the Trustee as provided in this Section. Upon surrender for transfer or exchange of any Note at the principal corporate trust office of the Trustee, the Issuer shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of the same series and maturity, of any authorized denominations and of a like aggregate principal amount.

Every Note presented or surrendered for transfer or exchange shall (if so required by the Issuer or the Trustee, as Registrar) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Trustee, as Registrar, duly executed by the Noteholder thereof or his attorney or legal representative duly authorized in writing.

All Notes surrendered upon any exchange or transfer provided for in this Indenture shall be promptly cancelled by the Trustee and thereafter disposed of as required by applicable law.

All Notes issued upon any transfer or exchange of Notes shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Notes surrendered upon such transfer or exchange.

No service charge shall be made for any registration, transfer or exchange of Notes, but the Trustee or any securities depository may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Notes, and such charge shall be paid before any such new Note shall be delivered. The fees and charges of the Trustee for making any transfer or exchange and the expense of any bond printing

necessary to effect any such transfer or exchange shall be paid by the Issuer. In the event any Noteholder fails to provide a correct taxpayer identification number to the Trustee, the Trustee may impose a charge against such Noteholder sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Code, such amount may be deducted by the Trustee from amounts otherwise payable to such Noteholder hereunder or under the Notes.

The Trustee shall not be required (i) to transfer or exchange any Note during a period beginning at the opening of business 15 days before the day of the first publication or the mailing (if there is no publication) of a notice of redemption of such Note and ending at the close of business on the day of such publication or mailing, or (ii) to transfer or exchange any Note so selected for redemption in whole or in part, during a period beginning at the opening of business on any Regular Record Date for such series of Notes and ending at the close of business on the relevant Interest Payment Date therefor.

The Person in whose name any Note shall be registered on the note register shall be deemed and regarded as the absolute owner thereof for all purposes, except as otherwise provided in this Indenture, and payment of or on account of the principal of and premium, if any, and interest on any such Note shall be made only to or upon the order of the Noteholder thereof or his legal representative, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

The Trustee will keep on file at its principal corporate trust office a list of the names and addresses of the last known owners of all Notes and the identification numbers of such Notes held by each of such owners. At reasonable times and under reasonable regulations established by the Trustee, the list may be inspected and copied by the Issuer or the owners of 10% or more in principal amount of Notes Outstanding or the authorized representative thereof, provided that the ownership of such owner and the authority of any such designated representative shall be evidenced to the satisfaction of the Trustee.

**Section 2.08. Mutilated, Destroyed, Lost and Stolen Notes.** If (i) any mutilated Note is surrendered to the Trustee, or the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, and (ii) there is delivered to the Issuer and the Trustee such security or indemnity as may be required by it to save the Trustee and the Issuer harmless, then, in the absence of notice to the Trustee that such Note has been acquired by a bona fide purchaser, the Issuer shall execute and upon its request the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a new Note of the same series and maturity and of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section, the Issuer and the Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith.

Every new Note issued pursuant to this Section in lieu of any destroyed, lost or stolen Note, shall constitute an original additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all the security and benefits of this Indenture equally and ratably with all other Outstanding Notes.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

**Section 2.09. Cancellation of Notes.** All Notes surrendered for payment, redemption, transfer, exchange or replacement, if surrendered to the Trustee, shall be promptly cancelled by the Trustee, and, if surrendered to any Paying Agent other than the Trustee, shall be delivered to the Trustee and, if not already cancelled, shall be promptly cancelled by the Trustee. The Issuer may at any time deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder, which the Issuer may have acquired in any manner whatsoever, and all Notes so delivered shall be promptly cancelled by the Trustee. No Note shall be authenticated in lieu of or in exchange for any Note cancelled as provided in this Section, except as expressly provided by this Indenture. The Trustee shall execute and deliver to the Issuer a certificate describing the Notes so cancelled. All cancelled Notes held by the Trustee shall be disposed of in accordance with applicable law.

### ARTICLE III

#### REDEMPTION OF NOTES

**Section 3.01. Notes Subject to Redemption.** The Notes are not subject to redemption prior to maturity.

### ARTICLE IV

#### FUNDS AND ACCOUNTS

**Section 4.01. Creation of Funds and Accounts.** The following funds and accounts are hereby created and shall be maintained by the Trustee under this Indenture:

- A. Costs of Issuance Fund;
- B. Construction Trust Fund; and
- C. Rebate Fund.

The Costs of Issuance Fund, the Construction Trust Fund and the Rebate Fund shall be held by the Trustee hereunder separate and apart from all other moneys and funds of the Trustee and the Issuer.

For the purposes of internal accounting, the funds and accounts created or maintained pursuant to this Section may contain one or more accounts and sub-accounts, as the Issuer shall direct.

Pending the application of amounts on deposit in the the Construction Trust Fund as provided in this Indenture, such amounts are hereby pledged to the payment of the principal of and interest on the Notes. The Rebate Fund and the Costs of Issuance Fund are not pledged to the payment of any Notes. The Trustee shall open the above created accounts at such time said accounts are required for purposes of this Indenture and is not otherwise required to open such accounts.

**Section 4.02. Deposit of Note Proceeds.** The proceeds of sale of the Notes shall be paid to the Trustee and forthwith transferred and deposited as follows:

- (i) to the Construction Trust Fund: \$6,602,383; and
- (ii) to the Costs of Issuance Fund: \$65,267.

**Section 4.03. Costs of Issuance Fund.** From the proceeds of the Notes \$65,267 shall be deposited into the Costs of Issuance Fund and used to pay the Costs of Issuance. On March 1, 2016, any amounts remaining on deposit in the Costs of Issuance Fund shall be transferred to the Paying Agent and used to pay the interest of the Notes next coming due.

**Section 4.04. Construction Trust Fund.**

Except as provided in Section 4.01 hereof, disbursements from the 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 the Mayor 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 disbursements 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 Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

**Section 4.05. Rebate Fund.** There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Tax Certificate. All amounts on deposit at any time in the Rebate Fund shall be held by the Trustee in trust to the extent required to pay rebatable arbitrage to the United States of America, and neither the Issuer nor the Owner of any Notes shall have any rights in or claim to such money. All amounts held in the Rebate Fund shall be governed by this Section and by the Tax Certificate (which are incorporated herein by reference).

Pursuant to the Tax Certificate, unless the Issuer is subject to an exemption set forth therein, the Trustee shall remit all required rebate installments and a final rebate payment to the United States. Neither the Trustee nor the Issuer shall have any obligation to pay any amounts required to be rebated pursuant to this Section and the Tax Certificate, other than from moneys held in the Rebate Fund created under this Indenture as provided in this Indenture or from other moneys provided to it by the Issuer. Any moneys remaining in the Rebate Fund after redemption and payment of all of the Notes and payment and satisfaction of any rebatable arbitrage shall be withdrawn and paid jointly to the Issuer.

The obligation to pay arbitrage rebate to the United States and to comply with all other requirements of this Section and the Tax Certificate shall survive the defeasance or payment in full of the Notes until all rebatable arbitrage shall have been paid. The Issuer shall retain a qualified firm to prepare the rebate calculations.

**Section 4.06. Payments Due on Saturdays, Sundays and Holidays.** In any case where the date of maturity of principal of, redemption premium, if any, or interest on the Notes or the date fixed for redemption of any Notes shall be a day other than a Business Day, then payment of principal, redemption premium, if any, or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

**Section 4.07. Investments.**

A. Subject to the provisions of Section 5.06, moneys in any fund or account established pursuant to this Indenture and held by the Trustee shall be invested by the Trustee as directed pursuant to an Officer's Certificate filed with the Trustee, but only in Permitted Investments. In the absence of any such Officer's Certificate.

B. The Trustee and its affiliates may act as sponsor, advisor, depository, principal or agent in the acquisition or disposition of any investment. Neither the Trustee nor the Issuer shall incur any liability for losses arising from any investments made in accordance with this Section. The Trustee shall not be required to determine the legality of any investments.

C. In determining the value of the assets of the funds and accounts created by this Indenture, investments and accrued interest thereon shall be deemed a part thereof. Investments shall be valued at current market value. Interest earned, profits realized and losses suffered by reason of any investment of the funds and accounts created by this Indenture shall be credited or charged, as the case may be, to the fund or account for which such investment shall have been made.

D. Investments in any and all funds and accounts may be commingled for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular funds or accounts of amounts received or held by the Trustee or the Issuer hereunder, provided that the Trustee or the Issuer, as applicable, shall at all times account for such investments strictly in accordance with the funds and accounts to which they are credited and otherwise as provided in this Indenture.

E. The Trustee will furnish the Issuer periodic statements of the funds and accounts established hereunder that are held by the Trustee, which statements shall include detail for all investment transactions made by the Trustee hereunder.

**Section 4.08. Priority of Payments Following Default.** If on any date on which the principal or Redemption Price of or interest on any Note becomes due, the amounts on deposit in the funds and accounts established pursuant to this Indenture and available for the payment thereof shall not be sufficient to provide for such payments, amounts held by the Trustee hereunder, together with any moneys thereafter becoming available for such purpose, shall be applied as follows:

FIRST: to the payment to the persons entitled thereto of all installments of interest then due on the Notes Outstanding, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment of such installment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference, except as to any difference in the respective rates of interest specified in such Notes;

SECOND: to the payment to the persons entitled thereto of the unpaid principal of any Outstanding Notes that shall have become due and payable, in the order of their due dates, with interest upon the principal amount of such Notes from the respective dates upon which such principal shall have become due and payable and, if the amount available shall not be sufficient to pay in full the principal of such Notes due and payable on any particular date, together with such interest, then first to the payment of such interest, ratably, according to the amount of interest due on such date, and then to the payment of such principal, ratably, according to the amount of principal due on such date, to the persons entitled thereto, without any discrimination or preference, except as to any difference in the respective rates of interest specified in such Notes; and

THIRD: to the payment of the interest on and the principal of the Notes Outstanding as the same become due and payable.

Notwithstanding the foregoing provisions of this Section, (a) amounts on deposit in any fund or account maintained for any particular Series of Notes shall be applied solely to the payment of



amounts due on Notes of such Series; and (b) any other amounts held by the Trustee or the Issuer hereunder shall be allocated pro rata among the Outstanding Notes of each Series after giving effect to the application of amounts on deposit in the Debt Service Fund and the Reserve Fund maintained for such Notes, on the basis of the amounts of principal and interest then due on such Notes.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied by the Trustee at such times, and from time to time, as the Trustee in its sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. The setting aside of such moneys in trust for the benefit of all holders of Notes Outstanding shall constitute proper application by the Trustee, and the Trustee shall incur no liability whatsoever to the Issuer, to any Noteholder or to any other person for any delay in applying any such moneys, so long as the Trustee acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Indenture as may be applicable at the time of application by the Trustee. Whenever the Trustee shall exercise such discretion in applying such moneys, it shall fix the date (which shall be an Interest Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal of the Notes to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing of any such date. The provisions of this paragraph shall be subject in all respects to the provisions of the Notes with respect to the payment of defaulted interest on the Notes. The Trustee shall not be required to make payment to the holder of any Note unless such Note shall be presented to the Trustee for appropriate endorsement.

## **ARTICLE V**

### **COVENANTS OF THE ISSUER; DEFAULT AND REMEDIES**

#### **Section 5.01. Authority To Issue Notes; Notes Constitute Special Obligations.**

A. The Issuer covenants that it is duly authorized under the Constitution and laws of the State of West Virginia to execute this Indenture, to issue the Notes and to pledge and assign the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the execution and delivery of this Indenture and the issuance of the Notes has been duly and effectively taken; and that the Notes in the hands of the owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights to the extent applicable and their enforcement may be subject to the exercise of judicial discretion in appropriate cases.

B. The Notes are special, limited obligations of the Issuer payable solely from and secured solely by the amounts in the the Debt Service Fund created or maintained hereunder and do not constitute general obligation debt of the Issuer or pledge the Issuer's full faith and credit or taxing power. The Notes and interest thereon shall not be deemed to constitute a debt or liability of the State or of any political subdivision or body politic thereof, including the Issuer, within the meaning of any state constitutional provision or statutory limitation and shall not constitute a pledge

of the full faith and credit of the Issuer, the State or any political subdivision or body politic thereof, but shall be payable solely from the funds provided for in this Indenture. The issuance of the Notes shall not, directly, indirectly or contingently, obligate the Issuer, the State or any political subdivision or body politic thereof, including the Issuer, to levy any form of taxation therefor or to make any appropriation for their payment. The State shall not in any event be liable for the payment of the principal of, redemption premium, if any, or interest on the Notes or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the Issuer. No breach by the Issuer of any such pledge, mortgage, obligation or agreement may impose any liability, pecuniary or otherwise, upon the State or any charge upon its general credit or against its taxing power.

**Section 5.02. Books and Records.** The Issuer will keep, or cause to be kept, proper books of record and account in which complete and correct entries shall be made of all transactions relating to the Project. Such books shall be subject to the inspection of the Trustee and any duly authorized representative of Noteholders of not less than ten percent of the Notes, upon written request to the Issuer by the Trustee or such representative, as applicable. The Issuer shall provide the Trustee or such representative, as applicable, an opportunity to inspect such books and records during the Issuer's regular business hours and on a mutually agreeable date not later than 30 days after the Issuer receives such request.

**Section 5.03. Further Assurances.** The Issuer will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for better assuring and confirming unto the Noteholders the rights and benefits provided in this Indenture.

**Section 5.04. Notes Not to Be Arbitrage Notes; Rebate Fund.** The Mayor of the Issuer shall be the official of the Issuer responsible for issuing the Notes (the "**Section 148 Certifying Official**"). The Section 148 Certifying Official shall execute and deliver (on the Date of Issue) a certificate of the Issuer (each such certificate, as it may be amended and supplemented from time to time in accordance with this Section, being referred to herein as a "**Section 148 Certificate**") that complies with the requirements of Section 148 of the Code or any successor to such Section in effect on the date of issuance of such Notes ("**Section 148**"). The Issuer shall set forth in such Section 148 Certificate its reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Notes, or of any moneys, securities or other obligations that may be deemed to be proceeds of the Notes within the meaning of Section 148 (collectively, "**Note Proceeds**").

The Issuer covenants that (i) the facts, estimates and circumstances set forth in each Section 148 Certificate will be based on the Issuer's reasonable expectations on the date of delivery of such Certificate and will be, to the best of the Section 148 Certifying Officials' knowledge, true, correct and complete as of that date, and (ii) the Section 148 Certifying Officials will make reasonable inquiries to ensure such truth, correctness and completeness.

The Issuer further covenants that it will not make, or (to the extent it exercises control or direction) permit any other person to make, any use of the Note Proceeds that would cause any of the

Notes to be “arbitrage Notes” within the meaning of Section 148. The Issuer further covenants that it will comply with those provisions of Section 148 that are applicable to the Notes on the Date of Issue and with those provisions of Section 148 that may subsequently be lawfully made applicable to the Notes.

The Issuer shall (i) hold and invest Note Proceeds within its control (if such proceeds are invested), and (ii) direct the Trustee to transfer amounts on deposit in any fund or account created by this Indenture to the Rebate Fund for the payment of rebates or payments in lieu thereof to the United States of America, all in accordance with the expectations of the Issuer set forth in the Section 148 Certificates.

The Issuer shall make timely payment, but only from the Rebate Fund and other property pledged under this Indenture, of any rebate amount or payment in lieu thereof (or installment of either) required to be paid to the United States of America in order to preserve the excludability from gross income, for federal income tax purposes, of interest paid on the Notes and shall include with any such payment such other documents, certificates or statements as shall be required to be included therewith under then-applicable law and regulations.

Upon the written direction of the Issuer, the Trustee shall transfer amounts on deposit in any fund or account created by this Indenture to the Rebate Fund, any other provision of this Indenture to the contrary notwithstanding. Amounts on deposit in the Rebate Fund from time to time required to be paid to the United States of America pursuant to Section 148 as a rebate or payment in lieu thereof shall be made available by the Trustee to the Issuer for such payments upon the written direction of the Issuer. Upon the written direction of the Issuer, the Trustee shall transfer amounts on deposit in the Rebate Fund to any fund or account created by this Indenture, provided that the amount set forth by the Issuer in such written direction to be transferred shall not exceed the excess of the amount on deposit in the Rebate Fund over the rebate liability as of the date of calculation, less amounts theretofore paid to the United States as rebate with respect to the Notes.

The Section 148 Certifying Officials may execute an amendment or supplement to any Section 148 Certificate upon delivery to the Trustee of a Favorable Opinion of Bond Counsel with respect to the actions to be taken by the Issuer in accordance with such amendment or supplement.

Neither the Issuer nor the Trustee shall incur any liability in connection with any action as contemplated herein so long as the Issuer and the Trustee act in good faith.

**Section 5.05. Performance of Covenants.** The Issuer shall (to the extent within its control) faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Notes and in all proceedings pertaining thereto.

**Section 5.06. Inspection of Books.** The Issuer covenants and agrees that all books and documents in its possession relating to the Notes, this Indenture and the transactions relating thereto shall at all reasonable times be open to inspection by the Trustee. The Trustee covenants and agrees that all books and documents in its possession relating to the Notes, this Indenture, and the

transactions relating thereto, shall be open to inspection by the Issuer during business hours upon reasonable notice.

**Section 5.07. Default and Remedies.**

A. Each of the following shall be an “Event of Default”:

(1) Failure to pay the principal of, or the premium, if any, or interest on any of the Notes when the same shall become due and payable at maturity, upon redemption, on an Interest Payment Date; or

(2) Failure by the Issuer to perform any of its covenants, conditions, agreements and provisions contained in the Notes or in this Indenture, other than as specified in (1) above, and such failure shall continue beyond the period, and after the notice, specified in Subsection (B), below.

B. No default under Subsection (A)(2) of this Section shall constitute an Event of Default until actual notice of such default shall be given to the Issuer by the Trustee or by the Owners of not less than 25% in aggregate principal amount of all Notes Outstanding and until the Issuer shall have had 30 days after receipt of such notice to correct such default, and shall not have corrected it; provided, however, if said default be such that it cannot be corrected within such 30 day period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer within the applicable period and diligently pursued in good faith.

In the event that any payment referred to in Subsection 5.10(A)(1) is not timely made, the Trustee shall immediately notify the Issuer by telephone that such payment has not been made and shall confirm such notice in writing.

C. If there be any default in the payment of the principal of and interest on any of the Notes, or if the Issuer defaults in the performance of any covenant contained in this Indenture, the Trustee may, and shall, upon the written request of the Noteholders of not less than 10% in principal amount of the Notes then Outstanding by proper suit compel the performance of the duties of the officials of the Issuer under the Constitution and laws of the State and under this Indenture, and to take any action or obtain any proper relief in law or equity available under the laws of the State.

D. No remedy herein conferred upon or reserved to the Trustee or the Owners is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by any law. The Notes shall not be subject to acceleration on account of an Event of Default.

E. No delay or omission of the Trustee or the Owners to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy given by this Indenture to the Trustee or the Owners may be exercised from time to time and as often as may be deemed expedient.

F. The Trustee may, and upon the written request of the Noteholders of not less than 50% of principal amount of the Notes then Outstanding, shall waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Indenture or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

G. No Noteholder of any Note shall have any right to institute any suit, action, mandamus or other proceeding in equity or in law for the protection or enforcement of any right under this Indenture or under the laws of the State unless such owner previously shall have given to the Trustee written notice of the default on account of which such suit, action or proceeding is to be taken, and unless the Noteholders of not less than 10% in principal amount of the Notes then Outstanding shall have made written request of the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted by the laws of the State, or to institute such action, suit or proceeding in its name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the cost, expense and liabilities to be incurred therein or thereby and the Trustee shall have refused or neglected to comply with such request within a reasonable time, and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trust of this Indenture or to any other remedy hereunder. It is understood and intended that no one or more Owners of the Notes shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder except in the manner herein provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all Owners of the Notes, and that any individual rights of action or other right given to one or more of such Owners by law are restricted by this Indenture to the rights and remedies herein provided.

H. All rights of action under this Indenture or under any of the Notes, enforceable by the Trustee, may be enforced by it without the possession of any of the Notes, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name and for the benefit of all the Owners of the Notes, subject to the provisions of this Indenture.

#### **Section 5.08. Covenant to File Documentation.**

The Issuer covenants to comply with any continuing disclosure requirements imposed by the Municipal Securities Rulemaking Board or other applicable federal or state authority.

### **ARTICLE VI**

#### **THE TRUSTEE**

**Section 6.01. Trustee as Registrar.** The Trustee is hereby designated and agrees to act as Registrar for and in respect to the Notes and, except as otherwise provided in any Supplemental Indenture.

**Section 6.02. Trustee Entitled to Indemnity.** The Trustee shall be under no obligation to institute any suit, or to undertake any proceeding under this Indenture, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers hereunder, until it shall be indemnified to its satisfaction against any and all costs and expenses, outlays and counsel fees and other reasonable disbursements, and against all liability except as a consequence of an action or omission taken by it in bad faith or of its own gross negligence or willful misconduct. Nevertheless, the Trustee may begin suit, or appear in and defend suit, or do anything else in its reasonable judgment proper to be done by it as the Trustee under this Indenture, without indemnity, and in such case the Issuer shall reimburse the Trustee from the Revenue Fund or amounts on deposit in the Costs of Issuance Fund, for all costs and expenses, outlays and counsel fees and other reasonable disbursements properly incurred in connection therewith. If the Issuer shall fail to make such reimbursement, the Trustee may reimburse itself from any moneys in its possession under the provisions of this Indenture and shall be entitled to a preference therefor over any Notes Outstanding hereunder.

**Section 6.03. Responsibilities of the Trustee.** The recitals contained in this Indenture and in the Notes shall be taken as the statements of the Issuer, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representation as to the validity or sufficiency of this Indenture or the Notes or with respect to the security afforded by this Indenture, and the Trustee shall incur no liability with respect thereto. Except as otherwise expressly provided in this Indenture, the Trustee shall have no responsibility or duty with respect to: (i) the issuance of Note for value; (ii) the application of the proceeds thereof, except to the extent that such proceeds are received by it in its capacity as Trustee; (iii) the application of any moneys paid to the Issuer or others in accordance with this Indenture, except as to the application of any moneys paid to it in its capacity as Trustee; or (iv) any calculation of arbitrage or rebate under the Code.

The duties and obligations of the Trustee shall be determined by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture.

The Trustee shall not be liable for any action taken or omitted by it in the performance of its duties under this Indenture, except for actions or omissions taken in bad faith or its own negligence or willful misconduct.

**Section 6.04. Property Held in Trust.** All moneys and securities held by the Trustee at any time pursuant to the terms of this Indenture shall be held by the Trustee in trust for the purposes and under the terms and conditions of this Indenture.

**Section 6.05. Trustee Protected in Relying on Certain Documents.** The Trustee may rely upon any resolution, order, ordinance, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond or other document provided to the Trustee in accordance with the terms of this Indenture that it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or person or to have been prepared and furnished pursuant to any of the

provisions of this Indenture, or upon the written opinion of any counsel, architect, engineer, insurance consultant, management consultant or accountant believed by the Trustee to be qualified in relation to the subject matter, and the Trustee shall be under no duty to make any investigation or inquiry into any statements contained or matters referred to in any such instrument. The Trustee may consult with counsel, who may or may not be Bond Counsel or counsel to the Issuer, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it in good faith and in accordance therewith.

Whenever the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Indenture, such matter may be deemed to be conclusively proved and established by an Officer's Certificate, unless other evidence in respect thereof be hereby specifically prescribed. Such Officer's Certificate shall be full warrant for any action taken or suffered in good faith under the provisions hereof, but in its discretion the Trustee may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as it may deem reasonable. Except as otherwise expressly provided herein, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision hereof by the Issuer to the Trustee shall be sufficiently executed if executed in the name of the Issuer by an Authorized Officer.

The Trustee shall not be under any obligation to see to the recording or filing of this Indenture, or otherwise to the giving to any person of notice of the provisions hereof except as expressly required herein.

**Section 6.06. Compensation.** Unless otherwise provided by contract with the Trustee, the Issuer shall pay to the Trustee from the Revenue Fund, reasonable compensation for all services rendered by it hereunder, including its services as Registrar, together with all its reasonable expenses, charges and other disbursements and those of its counsel, agents and employees, incurred in and about the administration and execution of the trusts hereby created and the exercise of its powers and the performance of its duties hereunder, subject to any limit on the amount of such compensation or recovery of expenses or other charges as shall be prescribed by specific agreement, and the Trustee shall have a lien therefor on any and all funds at any time held by it hereunder prior to any Notes Outstanding. The Issuer, from the Revenue Fund, or amounts on deposit in the Costs of Issuance Fund, shall indemnify and save the Trustee harmless against any expenses and liabilities that the Trustee may incur in the exercise and performance of its powers and duties hereunder that are not due to an action or omission taken in bad faith, or its negligence or willful misconduct. None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if in the judgment of the Trustee there are reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it. If the Issuer shall fail to make any payment required by this Section, the Trustee may make such payment from any moneys in its possession under the provisions of this Indenture and shall be entitled to a preference therefor over any Notes Outstanding hereunder.

**Section 6.07. Permitted Acts.** The Trustee and its directors, officers, employees or agents may become the owner of or may in good faith buy, sell, own, hold and deal in Notes and may join in

any action that any holder of Notes may be entitled to take as fully and with the same rights as if it were not the Trustee. The Trustee may act as depository, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, the Issuer or any committee formed to protect the rights of holders of Notes or to effect or aid in any reorganization growing out of the enforcement of the Notes or this Indenture, whether or not such committee shall represent the holders of a majority of the Notes.

**Section 6.08. Resignation of Trustee.** The Trustee may at any time resign and be discharged of its duties and obligations hereunder by giving not fewer than 30 days' notice, specifying the date when such resignation shall take effect, to the Issuer and each Noteholder of any outstanding Note. Such resignation shall take effect upon the appointment of a successor as provided in Section 6.10 and the acceptance of such appointment by such successor.

**Section 6.09. Removal of Trustee.** The Trustee may be removed at any time by (i) the Owners of a majority of the Notes by an instrument or concurrent instruments in writing signed and acknowledged by such Noteholders or by their attorneys-in-fact, duly authorized and delivered to the Issuer, or (ii) so long as no default shall have occurred and be continuing under this Indenture, the Issuer. Copies of each such instrument shall be delivered by the Issuer to the Trustee and any successor thereof. The Trustee may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the Issuer or the Owners of not less than 10% of the Notes.

**Section 6.10. Successor Trustee.** If the Trustee shall resign, be removed, be dissolved or become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee or of its property shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs, the position of the Trustee hereunder shall thereupon become vacant.

If the position of Trustee shall become vacant for any of the foregoing reasons or for any other reason, a successor Trustee shall be appointed by the Issuer or, if a default shall have occurred and be continuing hereunder, by the Owners of at least 25% of the Notes by an instrument or concurrent instruments in writing delivered to such successor Trustee, with notification thereof being given to the predecessor Trustee and, in the case of any appointment made by the Noteholders, the Issuer.

If in a proper case no appointment of a successor Trustee shall be made within 45 days after the giving by any Trustee of any notice of resignation in accordance with Section 6.08 or after the occurrence of any other event requiring or authorizing such appointment, the Trustee or any Noteholder of Notes may apply to any court of competent jurisdiction for the appointment of such a successor, and the court may thereupon, after such notice, if any, as the court may deem proper, appoint such successor.

Any successor Trustee appointed under the provisions of this Section shall be a commercial bank or trust company or national banking association (i) having a capital and surplus and undivided



profits aggregating at least \$50,000,000, if there be such a commercial bank or trust company or national banking association willing and able to accept the appointment on reasonable and customary terms, and (ii) authorized by law to perform all the duties of the Trustee required by this Indenture.

Each successor Trustee shall mail, in accordance with the provisions of the Notes, notice of its appointment to the Trustee and each of the Noteholders of the Notes.

**Section 6.11. Transfer of Rights and Property to Successor Trustee.** Any successor Trustee appointed under the provisions of Section 6.10 shall execute, acknowledge and deliver to its predecessor and the Issuer an instrument in writing accepting such appointment, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, immunities, powers, duties, obligations and trusts of its predecessor hereunder, with like effect as if originally appointed as Trustee. However, the Trustee then ceasing to act shall nevertheless, on request of the Issuer or of such successor, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor all the rights, immunities, powers and trusts of such Trustee and all the right, title and interest of such Trustee in and to the Trust Estate, and shall pay over, assign and deliver to such successor any moneys or other properties subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from the Issuer be required by such successor for more fully and certainly vesting in and confirming to it any such moneys, estates, properties, rights, powers, duties or obligations, any and all such deeds, conveyances and instruments in writing, on request and so far as may be authorized by law, shall be executed, acknowledged and delivered by the Issuer.

**Section 6.12. Merger, Conversion or Consolidation of Trustee.** Any company into which the Trustee may be merged or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business shall be the successor to such Trustee hereunder, without any further act, deed or conveyance, provided that such company shall be a commercial bank or trust company or national banking association qualified to be a successor to such Trustee under the provisions of Section 6.10.

## ARTICLE VII

### SUPPLEMENTAL INDENTURES; MODIFICATION OR AMENDMENT OF INDENTURE

**Section 7.01. Modification or Amendment Without Consent.** Without notice to or the consent of the Noteholders, the Issuer and the Trustee at any time and from time to time may enter into Supplemental Indentures supplementing, modifying or amending this Indenture or any Supplemental Indenture for one or more of the following purposes:

A. to grant to or confer upon the Trustee for the benefit of the Noteholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Trustee for the benefit of such holders;

B. to add to the covenants and agreements of the Issuer contained in this Indenture, other covenants and agreements thereafter to be observed relative to the acquisition, construction, equipping, operation, maintenance, development or administration of the Project or relative to the application, custody, use or disposition of the proceeds of Notes;

C. to surrender any right, power or privilege reserved to or conferred upon the Issuer by this Indenture;

D. to confirm, as further assurance, any pledge under, and the subjection to any lien on, or claim or pledge of (whether created or to be created by this Indenture), or any other property pledged hereunder;

E. to cure any ambiguity or to cure or correct any defect or inconsistent provisions contained in this Indenture or to make such provisions in regard to matters or questions arising under this Indenture as may be necessary or desirable and not contrary to or inconsistent with this Indenture;

F. to permit the qualification of this Indenture or any Supplemental Indenture under any federal statute now or hereafter in effect or under any state blue sky law and, in connection therewith, to add to this Indenture or any Supplemental Indenture such other terms, conditions and provisions as may be permitted or required by such federal statute or state blue sky law;

G. to obtain or to maintain any ratings on any Notes from any nationally recognized securities rating agency;

H. to preserve the excludability from gross income for federal income tax purposes of the interest paid on any Notes theretofore issued; or

I. to make any other change in this Indenture which the Trustee determines shall not prejudice in any material respect the rights of the Owners of the Notes at the date as of which such change shall become effective.

**Section 7.02. Supplemental Indentures Requiring Consent of Noteholders.** In addition to Supplemental Indentures permitted by Section 7.01, with the prior written consent of the Owners of a majority of the Notes, the Issuer at any time and from time to time may enter into Supplemental Indentures amending or supplementing this Indenture, any Supplemental Indenture or any Note to modify any of the provisions thereof or to release the Issuer from any of the obligations, covenants, agreements, limitations, conditions or restrictions therein contained, provided that nothing contained herein shall permit, without the unanimous consent of the Owners of all Notes (a) the issuance of Additional Notes, (b) a change in any terms of redemption or purchase of any Note, the due date for the payment of the principal of or interest on any Note or any reduction in the principal, Redemption Price or purchase price of or interest rate on any Note without the consent of the Noteholder of such Note or (c) a preference or priority of any Note over any other Note or a reduction in the percentage of Notes the consent of the Noteholders of which is required for any modification of this Indenture.

**Section 7.03. Execution of Supplemental Indentures.** In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and, subject to Article VI, shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such Supplemental Indenture is authorized and permitted by and in compliance with the terms of this Indenture and that the execution and delivery thereof will not adversely affect the exclusion from federal gross income of interest on the Notes. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

**Section 7.04. Effect of Supplemental Indentures.** Upon the execution of any Supplemental Indenture under this Article, this Indenture shall be modified in accordance therewith and such Supplemental Indenture shall form a part of this Indenture for all purposes; and every owner of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound.

**Section 7.05. Reference in Notes to Supplemental Indentures.** Notes authenticated and delivered after the execution of any Supplemental Indenture pursuant to this Article may, and if required by the Trustee shall, bear a notation in form approved by the Trustee as to any matter provided for in such Supplemental Indenture. If the Issuer shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Issuer, to any such Supplemental Indenture may be prepared and executed by the Issuer and authenticated and delivered by the Trustee in exchange for Outstanding Notes.

**Section 7.06. Opinion of Bond Counsel.** Notwithstanding anything to the contrary in Section 7.01 or 7.02 hereof, before the Issuer and the Trustee enter into any Supplemental Indenture pursuant to Section 7.01 or 7.02 hereof, there shall have been delivered to the Trustee an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and the Act, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon the Issuer in accordance with its terms and will not adversely affect the exclusion from federal gross income of interest on any Tax-Exempt Notes then Outstanding.

## ARTICLE VIII

### SATISFACTION AND DISCHARGE

**Section 8.01. Satisfaction and Discharge of Indenture.** This Indenture and the liens, rights and interests created by this Indenture shall cease, determine and become null and void (except as to any surviving rights pursuant to Section 8.02 hereof) if the following conditions are met:

A. the principal of, premium, if any, and interest on all Notes have been paid or are deemed to be paid by the Paying Agent; and

B. all other sums payable under this Indenture with respect to the Notes are paid or provision satisfactory to the Trustee is made for such payment.

Thereupon, the Trustee shall execute and deliver to the Issuer a termination statement and such instruments of satisfaction and discharge of this Indenture as may be necessary at the written request of the Issuer, and shall pay, assign, transfer and deliver to the Issuer, or other Persons entitled thereto, all moneys, securities and other property then held by it under this Indenture as a part of the Trust Estate.

**Section 8.02. Rights Retained After Discharge.** Notwithstanding the satisfaction and discharge of this Indenture, the rights of the Trustee under Section 6.06 shall survive, and the Trustee shall retain such rights, powers and duties under this Indenture as may be necessary and convenient for the payment of amounts due or to become due on the Notes and the registration, transfer and exchange of Notes as provided herein.

## ARTICLE IX

### NOTICES, CONSENTS AND OTHER ACTS

**Section 9.01. Notices.** Except as otherwise provided herein, it shall be sufficient service of any notice, request, demand, authorization, direction, consent, waiver or other paper required or permitted by this Indenture to be made, given or furnished to or filed with the following Persons upon receipt by such Person, if the same shall be delivered in person or duly mailed by registered or certified mail, postage prepaid, return receipt requested, at the following addresses:

A. To the Issuer at:

City of Nitro  
2009 20<sup>th</sup> Street  
Nitro, WV 25143  
Attn: Dave Casebolt, Mayor

B. To the Agent at:

Crews & Associates, Inc.  
300 Summers Street, Suite 930  
Charleston, WV 25330-2764  
Attn: Greg Isaacs

C. To the Trustee at:

The Huntington National Bank  
3805 Edwards Road, Suite 350  
CN03  
Cincinnati, OH 45209  
Attn: Corporate Trust

D. To the Paying Agent at:

West Virginia Municipal Bond Commission  
900 Pennsylvania Avenue, Suite 1117  
Charleston, WV 253602  
Attn: Sara Rogers, Executive Director

A copy of the form of any notice from the Trustee to the Noteholders shall be given by the Trustee to the Issuer and, with respect to the Notes, to the Original Purchaser.

If, because of the temporary or permanent suspension of mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such delivery of notice in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient notice.

Notice to Noteholders shall be given by first class mail at the address of the Noteholders as shown on the note register maintained by the Trustee, and neither the failure to receive such notice, nor any defect in any notice so mailed, shall affect the sufficiency of such notice. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by the Noteholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**Section 9.02. Acts of Noteholders.** Any notice, request, demand, authorization, direction, consent, waiver or other action provided by this Indenture to be given or taken by the Noteholders may be embodied in and evidenced by one or more substantially concurrent instruments of similar tenor signed by such Noteholders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee, and, where it is hereby expressly required, to the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent, or of the ownership of Notes other than the assignment of the ownership of a Note, shall be sufficient for any purpose of this Indenture and conclusive in favor of the Issuer and the Trustee, if made in the following manner:

A. The fact and date of the execution by any Person of any such instrument or writing may be proved by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof, or by the affidavit of a witness of such execution. Whenever such execution is by an officer of a corporation or a member of a partnership on behalf of such corporation or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority.

B. The fact and date of execution of any such instrument or writing and the authority of any Person executing the same may also be proved in any other manner which the Trustee deems sufficient; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section.

C. The ownership of Notes and the amount or amounts, numbers and other identification of such Notes, and the date of holding the same, shall be proved by the Note Register maintained by the Trustee.

In determining whether the Noteholders of the requisite principal amount of Notes Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes registered on the Note Register in the name of the Issuer shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which the Issuer has identified in writing to the Trustee as being owned by the Issuer or an affiliate thereof shall be so disregarded.

Any notice, request, demand, authorization, direction, consent, waiver or other action by the Owner of any Note shall bind every future owner of the same Note and the owner of every Note issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Issuer in reliance thereon, whether or not notation of such action is made upon such Note.

**Section 9.03. Form and Contents of Documents Delivered.** Whenever several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to the other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an Authorized Officer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based is or are erroneous. Any Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Authorized Officer stating that the information with respect to such factual matters is in the possession of the Issuer, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters is or are erroneous.

Whenever any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Wherever in this Indenture, in connection with any application or certificate or report to the Trustee, it is provided that the Issuer shall deliver any document as a condition of the granting of such application, or as evidence of the Issuer's compliance with any term hereof, it is intended that the truth and accuracy, at the time of the granting of such application or at the effective date of such certificate or report (as the case may be), of the facts and opinions stated in such document shall in such case be conditions precedent to the right of the Issuer to have such application granted or to the sufficiency of such certificate or report.

**Section 9.04. Compliance Certificates and Opinions.** Upon any application or request by the Issuer to the Trustee to take any action under any provision of this Indenture, the Issuer shall furnish to the Trustee an Authorized Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of counsel rendering such opinion all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- A. a statement that each individual signing such certificate or opinion has read such condition or covenant and the definitions herein relating thereto;
- B. a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- C. a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such condition or covenant has been complied with; and
- D. a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

## ARTICLE X

### MISCELLANEOUS

**Section 10.01. Limitation of Liability of Issuer.** The Issuer shall not incur any responsibility in respect of the Notes or this Indenture other than in connection with the duties or obligations explicitly herein or in the Notes assigned to or imposed upon it. The Issuer shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements of the Trustee herein or of any of the documents executed by the Trustee in connection with the Notes, or as to the existence of a default or event of default thereunder.

No provision of this Indenture, the Notes, or any agreement, document, instrument or certificate executed, delivered or approved in connection with the issuance, sale, delivery or administration of the Notes (the “**Note Documents**”) shall require the Issuer to expend or risk its own general funds, the obligations and liabilities of the Issuer hereunder being payable solely from the proceeds of the Takeout Bonds and other property pledged hereunder.

Neither the Noteholders nor any other person shall have any claim against the Issuer or any officer, official, agent or employee of the Issuer for damages suffered as a result of the Issuer’s failure to perform in any respect any covenant, undertaking or obligation under any Note Documents or as a result of the incorrectness of any representation in, or omission from, any of the Note Documents, except to the extent that any such claim relates to an obligation, undertaking representation or covenant of the Issuer, such as the payment of debt service on the Notes, that is properly payable pursuant to the Act, and in accordance with the Note Documents.

Nothing contained in any of the Note Documents shall be construed to preclude any action or proceeding in any court or before any governmental body, agency or instrumentality against the Issuer or any of its officers, officials, agents or employees to enforce the provisions of any of the Note Documents.

In order to perform its duties and obligations hereunder, the Issuer may employ such agents as it deems necessary or advisable.

**Section 10.02. Benefits of Indenture Limited to Parties.** Nothing in this Indenture, expressed or implied, is intended to give to any person other than the Issuer, the Trustee and the Noteholders any right, remedy or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Noteholders and the Trustee.

**Section 10.03. Execution of Documents and Proof of Ownership of Notes.** Any request, declaration or other instrument which this Indenture may require or permit to be executed by Noteholders may be in one or more instruments of similar tenor, and shall be executed by Noteholders in person or by their attorneys appointed in writing. Except as otherwise herein expressly provided, the fact and date of the execution by any Noteholder or any Noteholder’s attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which such Noteholder or attorney purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to such officer the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such officer.

Except as otherwise herein expressly provided, the ownership of Notes and the amount, maturity, number and date of holding the same shall be proved by the Note Register.



Any request, declaration or other instrument or writing of the Noteholder of any Note shall bind all future Noteholders of such Note in respect of anything done or suffered to be done by the Issuer or the Trustee in good faith and in accordance therewith.

**Section 10.04. Moneys and Funds Held for Particular Notes.** Amounts held by the Trustee for the payment of the principal or Redemption Price of and interest on Notes due on any date shall be set aside and held in trust by it solely for the holders of such Notes pending such payment and shall not be available to pay the principal or Redemption Price of or interest on any other Notes.

**Section 10.05. Waiver of Personal Liability.** No officer, official, agent or employee of the Issuer shall be individually or personally liable for the payment of the principal of, or interest or any premium on, the Notes; but nothing herein contained shall relieve any such officer, official, agent or employee from the performance of any official duty provided by law.

**Section 10.06. Severability.** The parties hereto agree that the provisions contained in each Section of this Indenture, and within the subsections of such Sections are intended to be separate and divisible and if, for any reason, any one or more of them shall be held to be illegal, invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, then (a) the same shall not be held to affect the validity of any other provision contained in this Indenture and (b) the same shall be deemed to be modified to the minimum extent necessary for it to be legally enforceable. The parties hereto hereby expressly request and authorize any court of competent jurisdiction to enforce any such provision or to modify any such term thereof so that it shall be enforced by such court to the fullest extent permitted by applicable law. The Issuer hereby declares that, in the event a court of competent jurisdiction declares any Section, paragraph, sentence, clause or phrase of this Indenture to be illegal, invalid or unenforceable but is unable to modify it as authorized herein, it would have nevertheless adopted this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Notes pursuant thereto irrespective of the illegality, invalidity or unenforceability of any such Section, paragraph, sentence, clause or phrase.

**Section 10.07. Applicable Law.** This Indenture shall be governed by and enforced in accordance with the laws of the State of West Virginia applicable to contracts made and performed in the State of West Virginia. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION ARISING UNDER THIS INDENTURE. Any judicial proceeding arising out of or relating to this Indenture (including any declaratory judgments) shall be filed exclusively in the State and Federal courts located in West Virginia, and each party hereby consents to, and will submit to, the personal and subject matter jurisdiction of such courts in any proceeding to enforce any of its obligations under this Indenture and shall not contend that any such court is an improper or inconvenient venue. The foregoing shall not limit the right of any party to obtain execution of judgment in any other jurisdiction.

**Section 10.08. Conflict with Act.** In the event of a conflict between any provision of this Indenture with any provision of the Act as in effect on the date hereof, the provision of the Act shall prevail over the conflicting provision of this Indenture.

**Section 10.09. Payment or Performance on Business Days.** Except as otherwise expressly provided herein, if any date specified herein for the payment of any Note or the performance of any act shall not be a Business Day, such payment or performance shall be made on the next succeeding Business Day with the same effect as if made on such date.

**Section 10.10. Intention as to Seal and Contract.** It is intended that this Indenture, when signed on behalf of the Issuer and the Trustee and duly delivered between them, shall constitute a contractual obligation under seal under the laws of the State of West Virginia with force and effect as an agreement and indenture of trust.


**Section 10.11. Counterparts.** This Indenture may be executed in counterparts, each of which shall be deemed an original.

**IN WITNESS WHEREOF**, the Issuer and the Trustee have caused this Trust Indenture to be executed December 3, 2015.

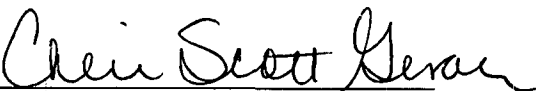
**CITY OF NITRO**

By:   
Its Mayor

Attest:

By:   
Its Recorder

**THE HUNTINGTON NATIONAL BANK, as Trustee**

By:   
Its Authorized Officer

**EXHIBIT A  
FORM OF NOTE**

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA  
CITY OF NITRO  
SEWER REVENUE BOND ANTICIPATION NOTES, SERIES 2015

No. NR-1 \$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That on this \_\_\_ day of \_\_\_\_\_, 2015, the CITY OF NITRO, a municipal corporation and political subdivision of the State of West Virginia in Kanawha County of said State (the "City"), for value received, hereby promises to pay, but only from the special funds provided therefor, as hereinafter set forth, to \_\_\_\_\_ (the "Owner"), or registered assigns, the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), on \_\_\_\_\_, or upon the issuance of revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes, whichever shall occur earlier. The interest on this Note shall be at the rate of \_\_\_\_\_% per annum, payable semiannually on the 1<sup>st</sup> day of each \_\_\_\_\_ and \_\_\_\_\_, commencing \_\_\_\_\_, 20\_\_\_. The entire outstanding principal balance of this Note and all interest accrued hereon shall be payable in full on \_\_\_\_\_, 20\_\_\_, or upon the issuance of revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes, whichever shall occur earlier.

The annual interest rate for this Note is computed on a simple interest/365 day basis.

The Registrar, as hereinafter defined, shall notify the City of the amount of interest so accrued. Interest is payable by check or draft mailed to the Owner at the address as it appears on the books of Registrar, as hereinafter defined, or by wire transfer or other mutually agreeable method. This Note shall be payable as to principal upon surrender at the principal office of The Huntington National Bank, as registrar and paying agent (the "Registrar"), in any coin or currency which on the date of payment of principal is legal tender for the payment of public and private debts under the laws of the United States of America.

This Note is subject to prepayment without penalty in whole or in part after \_\_\_\_\_, 20\_\_\_, upon the issuance of revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes.

This Note is issued for the purposes of (i) temporarily financing a portion of the costs of the acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage system of the City (the "Project"); and (ii) paying certain costs of issuance and related costs.

This Note 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 of the Code of West Virginia, 1931, as amended (the "Act"), and an Note Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2015, as supplemented by a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2015 (collectively, the "Ordinance"), and is subject to all the terms and provisions thereof.

THIS NOTE IS ISSUED JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S: (I) SEWER REVENUE BONDS (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SERIES 1996 A, DATED DECEMBER 10, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,575,902 (THE "SERIES 1996 A BONDS"); (II) SEWER REVENUE BONDS (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SERIES 2000 A, DATED JUNE 28, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,050,000 (THE "SERIES 2000 A BONDS"); (III) SEWER SYSTEM REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 5, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$543,900 (THE "SERIES 2001 A BONDS"); AND (IV) SEWER REVENUE BONDS (WEST VIRGINIA SRF PROGRAM), SERIES 2009 A, DATED NOVEMBER 12, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,910,778 (THE "SERIES 2009 A BONDS").

The principal of and interest on this Note are payable solely from and secured by a first lien on (1) the proceeds of any revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes; and (2) Surplus Revenues, if any, as defined in the Ordinance. This Note does not constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, nor shall the City be obligated to pay the same or the interest hereon except from the sources set forth above.

The principal of the Notes shall be payable in lawful money of the United States of America at the address of the Noteholder set forth in the Note Register, with the final payment to be made only upon delivery of the Notes to the Registrar for cancellation. Payment of interest on any Notes shall be made on each Interest Payment Date to the Noteholder at the close of business on the Regular Record Date for such Interest Payment Date by check or draft mailed to the person who is the registered owner of such Notes and at the address appearing on the Note Register at the close of business on the Regular Record Date pertaining to such Interest Payment Date, or at the option of any Registered Owner of \$1,000,000 or more of the Series 2015 Notes, by wire transfer to a domestic bank account specified in writing at least 5 days prior to the Record Date by such Registered Owner. If and to the extent the Issuer shall default in the payment or provision for payment of interest on any Notes on any Interest Payment Date, such interest in default shall cease to be payable to the person who was the registered owner of such Notes as of the Regular Record Date. Whenever moneys become available for the payment of such defaulted interest, the Registrar shall establish a Special Record Date for the payment of such defaulted interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment, and the Registrar shall cause notice of the proposed payment and of such Special Record Date to be mailed by first class mail, postage

prepaid, to the Noteholder at its address as it appears on the Note Register not less than 10 days prior to such Special Record Date. Such notice having been so mailed, the defaulted interest shall be payable to the persons who are the registered owners of the Notes (or their respective predecessor Notes) at the close of business on such Special Record Date.

This Note and the interest thereon are, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

Subject to the requirements for transfer set forth below, this Note is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia. This Note is transferable only by the transfer of registration upon the books of the Registrar by the Owner in person or by its attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner or its duly authorized attorney.

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 Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Note, together with all other obligations of the City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

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

This Note shall not be valid or obligatory unless authenticated and registered by the Registrar by the execution of the Registrar's Certificate of Authentication and Registration attached hereto and incorporated herein.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_ this Note of the City of Nitro, and does hereby irrevocably constitute and appoint \_\_\_\_\_, attorney to transfer said Note on the books of said City with full power of substitution in the premises.

\_\_\_\_\_

DATED: \_\_\_\_\_

IN THE PRESENCE OF: \_\_\_\_\_

## APPENDIX I

The Act provides for investment of funds in the same manner as the issuer may invest its funds. Accordingly, following are the authorized investments:

### §8-13-22a. Investment of municipal funds.

All municipal funds, the investment of which is not governed by other provisions of this code and not required for the payment of current obligations and not otherwise prohibited, may be invested and reinvested in:

- (1) Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;
- (2) Any evidence of indebtedness issued by any United States government agency guaranteed as to the payment of both principal and interest, directly or indirectly, by the United States of America including, but not limited to, the following: Government National Mortgage Association, federal land banks, federal home loan banks, federal intermediate credit banks, banks for cooperatives, Tennessee Valley Authority, United States postal service, farmers home administration, export-import bank, federal financing bank, federal home loan mortgage corporation, student loan marketing association and federal farm credit banks;
- (3) Any evidence of indebtedness issued by the Federal National Mortgage Association to the extent such indebtedness is guaranteed by the government National Mortgage Association;
- (4) Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situate within this state, if the payment thereof is substantially insured or guaranteed by the United States of America or any agency thereof;
- (5) Direct and general obligations of this state;
- (6) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, the trust at the time of the acquisition of the undivided interest, is rated in one of the three highest rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts;
- (7) Any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association: *Provided*, That any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: *Provided, however*, That if any commercial paper or any such security will mature within one year from the date of its issuance, it shall, at the time of its acquisition, be rated in one of the two highest rating grades by any such nationally known agency and commercial paper or other evidence of indebtedness of any private corporation or association shall be purchased only upon the written recommendation from an investment advisor that has over \$300 million in other funds under its management;



(8) Negotiable certificates of deposit issued by any bank, trust company, national banking association or savings institution which mature in less than one year and are fully collateralized;

(9) Interest earning deposits including certificates of deposit, with any duly designated state depository, which deposits are fully secured by a collaterally secured bond as provided in section four, article one, chapter twelve of this code: *Provided*, That a banking institution is not required to provide this collaterally secured bond, or other security in lieu of bond, if the deposits accepted are placed in certificates of deposit meeting the following requirements: (A) The funds are invested through a designated state depository selected by the municipality; (B) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the municipality; (C) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (D) the selected depository acts as custodian for the municipality with respect to such certificates of deposit issued for the municipality's account; and (E) at the same time that the municipality's funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the municipality through the selected depository;

(10) Mutual funds registered with the Securities and Exchange Commission which have assets in excess of \$300 million; and

(11) Deposits with any duly designated state depository that is selected and authorized by the municipality to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions:

(a) On or after the date that the municipal funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the municipality with respect to the funds deposited into such accounts.

(b) Municipal funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with section four, article one, chapter twelve of this code.

(c) The full amount of the funds of the municipality redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this subsection (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation.

(d) On the same date that the funds of the municipality are redeposited pursuant to this subsection, the selected depository receives an amount of deposits from customers of other financial institutions through the direct placement program that are equal to the amount of the municipality's funds redeposited by the selected depository.

# PRELIMINARY OFFICIAL STATEMENT DATED NOVEMBER 19, 2015

**NEW ISSUE - BOOK-ENTRY ONLY**

**NON-RATED**

*In the opinion of Jackson Kelly PLLC, Bond Counsel, under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, interest on the Series 2015 Notes (as defined herein) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and such interest will not be treated as a preference item for purposes of the alternative minimum tax imposed under the Code with respect to individuals and corporations. Under the Code, however, such interest is included in the adjusted current earnings of a corporation for purposes of computing the alternative minimum tax. In addition, in the opinion of Bond Counsel, under the Act (as defined herein), the Series 2015 Notes, and all interest and income thereon, shall be exempt from all taxation by the State of West Virginia (the "State") or any county, municipality, political subdivision or agency thereof. See "TAX MATTERS" herein.*

**\$6,720,000\***

## **CITY OF NITRO, WEST VIRGINIA SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015**

**Dated:** Date of Delivery

**Due:** As shown on inside front cover

The Series 2015 Notes are issued in fully registered form in the denomination of \$5,000 principal amount or any integral multiple thereof. Purchasers of the Series 2015 Notes will not receive certificates representing their interests in the Series 2015 Notes purchased. The Series 2015 Notes will be registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York.

Interest on the Series 2015 Notes is payable on each January 1 and July 1, commencing July 1, 2016, with the final interest payment due on January 1, 2019 (each, an "Interest Payment Date"). Principal of the Series 2015 Notes is due on each January 1, as shown on the inside front cover page hereto (each a "Principal Payment Date"). Principal and interest on the Series 2015 Notes is payable by the West Virginia Municipal Bond Commission, as paying agent (the "Paying Agent") to Cede & Co.

The Series 2015 Notes are being issued by the City of Nitro, West Virginia (the "Issuer") to provide funds (i) to temporarily finance the costs of acquisition and construction of additions, betterments, extensions and improvements to the Issuer's sanitary sewer collection and treatment system (the "System"), specifically including, but not limited to, extension of service to approximately 94 new customers, rehabilitation of existing sewer lines, relining of a 42 inch transmission main and replacement of a belt press, along with all necessary appurtenances (collectively, the "Project"); and (ii) to pay costs of issuance of the Series 2015 Notes and related costs.

The payment of the principal of Series 2015 Notes will be secured with a sole first lien on the proceeds of the Issuer's sewer revenue bonds, issued in one or more series, to be purchased by the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Department of Environmental Protection Clean Water State Revolving Loan Fund (the "CWSRF") as more fully described herein. The Issuer has received a commitment letter from the CWSRF (the "CWSRF Commitment Letter") to purchase the sewer revenue bonds from the Issuer in the not to exceed amounts described herein (collectively, the "CWSRF Bonds").

The payment of interest on the Series 2015 Notes is secured by a sole first lien on the Surplus Revenues of the System and from funds on deposit in the sinking fund established therefor under the Ordinance, all as more fully described herein. The Net Revenues derived from the System secure the Prior Bonds (as hereinafter defined) and each series of the CWSRF Bonds, which lien on the Net Revenues is senior and prior to the lien on Surplus Revenues of the Series 2015 Notes.

The Issuer has designated the Series 2015 Notes as "qualified tax-exempt obligations" for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended. See "Tax Matters" for additional information.

The Series 2015 Notes do not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, and the Issuer shall not be obligated to pay the Series 2015 Notes or the interest thereon except from proceeds of the CWSRF Bonds, when issued, and the Surplus Revenues of the System. Neither the credit nor the taxing power of the Issuer shall be deemed to be pledged to, nor shall tax ever be levied for, the payment of the principal of or interest on the Series 2015 Notes.

This cover page contains only a brief description of the Issuer, the Series 2015 Notes and the security therefor. It is not intended to be a summary of material information with respect to the Series 2015 Notes. Investors should read the entire Official Statement, including the section titled "INVESTMENT CONSIDERATIONS," to obtain information necessary to make an informed investment decision.

The Series 2015 Notes are offered for delivery when, as and if issued and received by the Underwriter, subject to prior sale and to withdrawal or modification of the offering, without notice, and to the unqualified approval of legality by Jackson Kelly PLLC, Charleston, West Virginia, Bond Counsel, and the approval of certain matters by Steptoe & Johnson PLLC, Charleston, West Virginia, Counsel to the Underwriter. Certain legal matters will be passed upon for the Issuer by Johnnie Brown, Esquire, City Attorney. It is expected that the Series 2015 Notes will be available for delivery through The Depository Trust Company on or about December 3, 2015.

Dated: \_\_\_\_\_, 2015



\*Preliminary, subject to change.

This Preliminary Official Statement and the information contained herein are subject to completion and amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities, in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction. The City deems this Preliminary Official Statement to be final for the purposes of the Securities and Exchange Commission Rule 15c2-12(b)(1), except for certain information on the cover page hereof and certain pages herein which have been omitted in accordance with said Rule and which will be supplied in the final Official Statement.

**\$6,720,000\***  
**City of Nitro, West Virginia**  
**Sewerage System Bond Anticipation Notes, Series 2015**  
**MATURITIES, AMOUNTS AND INTEREST RATES\***  
**Series 2015 Notes**

**Maturities, Amounts, Interest Rates, Prices & CUSIPS\*\***

<u>Maturity*</u> <u>Date</u>	<u>Amount*</u>	<u>Interest</u> <u>Rate</u>	<u>Price</u>	<u>Yield</u>	<u>CUSIP</u> <u>No.**</u>
01/01/2017	2,000,000				
01/01/2018	2,000,000				
01/01/2019	2,720,000				

\*Preliminary, subject to change.

\*\*CUSIP data on the [inside] cover page is provided by Standard & Poor's CUSIP Service Bureau, a division of the McGraw-Hill Companies, Inc. The CUSIP numbers on the cover page hereof are being provided solely for the convenience of the Holders of the Series 2015 Notes only at the time of issuance of the Series 2015 Notes, and none of the Issuer, the Utility Board (as defined herein) or the Underwriter make any representation with respect to such numbers or undertake any responsibility for their accuracy now or at any time in the future. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2015 Notes.

**CITY OF NITRO, WEST VIRGINIA**

**MAYOR**

Dave Casebolt

**COUNCIL**

Council Members

John Montgomery

Brenda Tyler

Bill Javins

Al Walls

Bill Racer

Laurie Elkins

Andy Shamblin

City Recorder – Rita Cox

City Treasurer – John Young

**UTILITY BOARD**

Dave Casebolt, Chairman

Rich Hively

Kim Painter

Harry Miller

Steve Boggs, P.E.

**BOND COUNSEL**

Jackson Kelley PLLC

Charleston, West Virginia

**COUNSEL TO CITY OF NITRO**

Johnnie Brown, Esquire

Charleston, West Virginia

**UNDERWRITER**

Crews & Associates, Inc.

Charleston, West Virginia

**UNDERWRITER'S COUNSEL**

Step toe & Johnson PLLC

Charleston, West Virginia

**REGISTRAR**

The Huntington National Bank

Cincinnati, Ohio

This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, and there shall not be any sale of the Series 2015 Notes in any jurisdiction in which it is unlawful to make such offer, solicitation or sale. No dealer, broker, salesman or other person has been authorized by the Issuer, the Utility Board or the Underwriter to give any information or to make any representations, other than as contained in this Official Statement. If given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. The information set forth herein has been obtained from the Issuer, the Utility Board and other sources, which are believed to be reliable, but is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Underwriter. The information and any expression of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the Issuer, the Utility Board or the System since the date hereof. This Official Statement is submitted in connection with the sale of securities referred to herein and may not be reproduced or used, in whole or in part, for any other purposes.

The information contained in this Official Statement has been obtained from the Issuer, the Utility Board and other sources believed to be reliable, but the accuracy or completeness of such information is not guaranteed by, and should not be construed as a promise by, any of the foregoing. The presentation of such information is intended to show recent historic information and is not intended to indicate future or continuing trends. No representation is made that the past experience, as shown by such financial and other information, will necessarily continue or be repeated in the future. This Official Statement contains, in part, estimates and matters of opinion, whether or not expressly stated to be such, which are not intended as statements or representations of fact or certainty, and no representation is made as to the correctness of such estimates and opinions, or that they will be realized. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Issuer, the Utility Board or the System.

The Series 2015 Notes shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the proceeds of the CWSRF Bonds, Surplus Revenues of the System, and from the funds on deposit in the Series 2015 Notes Payment Fund and the unexpended proceeds of the Series 2015 Notes, all as herein provided. No Holder or Holders of the Series 2015 Notes shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2015 Notes or the interest thereon.

#### **Forward-Looking Statements**

**This Official Statement contains statements relating to future results that are “forward-looking statements” as defined in the Private Securities Litigation Reform Act of 1995. When used in this Official Statement, the words “estimated,” “forecasted,” “intended,” “expected,” “anticipated,” “projected,” “assumed” and similar expressions identify forward-looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material. For a discussion of certain of such risks and possible variations in results, see the information under “INVESTMENT CONSIDERATIONS.”**

**YOU SHOULD MAKE YOUR OWN DECISION WHETHER THIS OFFERING MEETS YOUR INVESTMENT OBJECTIVES AND RISK TOLERANCE LEVEL. NO FEDERAL OR STATE SECURITIES COMMISSION HAS APPROVED, DISAPPROVED, ENDORSED OR RECOMMEND THIS OFFERING. NO INDEPENDENT PERSON HAS CONFIRMED THE ACCURACY OR TRUTHFULNESS OF THIS DISCLOSURE, NOR WHETHER IT IS COMPLETE.**

The Ordinance has not been qualified under the Trust Indenture Act of 1939, as amended because of available exemptions therefrom.

The following sentence has been provided by the Underwriter for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as a part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

The Series 2015 Notes will not be registered under the Securities Act of 1933, as amended, or any state securities law, and will not be listed on any stock or other securities exchange. Neither the Securities and Exchange Commission nor any other federal, state or other governmental entity or agency has determined or confirmed the accuracy of this Official Statement.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2015 NOTES AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

**TABLE OF CONTENTS**

INTRODUCTION ..... 1  
PURPOSE AND PLAN OF FINANCING..... 3  
THE SERIES 2015 NOTES..... 3  
BOOK-ENTRY ONLY SYSTEM..... 4  
SECURITY FOR THE SERIES 2015 NOTES ..... 5  
THE ISSUER..... 7  
THE SYSTEM AND THE UTILITY BOARD..... 8  
DEBT SERVICE COVERAGE..... 9  
DEBT SERVICE REQUIREMENTS..... 10  
INVESTMENT CONSIDERATIONS ..... 11  
LITIGATION..... 15  
LEGAL MATTERS..... 15  
TAX MATTERS..... 15  
UNDERWRITING ..... 19  
FINANCIAL STATEMENTS..... 19  
CONTINUING DISCLOSURE..... 19  
MISCELLANEOUS ..... 20

Appendices:

- Appendix A – Kanawha County and Putnam County, West Virginia, Economic and Demographic Data
- Appendix B – The System and the Utility Board
- Appendix C – Financial Statements of the City of Nitro
- Appendix D – Book-Entry Only System
- Appendix E – Proposed Form of Bond Counsel Opinion
- Appendix F – Form of Ordinance and Notes Supplemental Resolution
- Appendix G – Rate Tariff
- Appendix H – Form of Continuing Disclosure Agreement

**OFFICIAL STATEMENT**

**\$6,720,000\***

**CITY OF NITRO, WEST VIRGINIA  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015**

**INTRODUCTION**

This Official Statement, including the cover page and the Appendices hereto, is provided to set forth certain information concerning the issuance by the City of Nitro, a West Virginia municipal corporation (the "Issuer"), of \$6,720,000\* in aggregate principal amount of its Sewerage System Bond Anticipation Notes, Series 2015 (the "Series 2015 Notes"). The Series 2015 Notes are being issued pursuant to the Constitution and laws of the State of West Virginia (the "State"), particularly Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act") and an ordinance enacted by the Council of the Issuer on October 20, 2015, effective November 17, 2015, as supplemented by a supplemental parameters resolution adopted on November 17, 2015 (said ordinance, as so supplemented and together with the Certificate of Determinations incorporated by reference, collectively hereinafter referred to as the "Ordinance"). The net proceeds of the sale of the Series 2015 Notes will be applied: (i) to temporarily finance a portion of the costs of acquisition and construction of the Project, as hereinafter defined; and (ii) to pay costs of issuance of the Series 2015 Notes and related costs. See "PURPOSE AND PLAN OF FINANCING" herein.

The Issuer intends to permanently finance the costs of the Project, as hereinafter defined, and repay the principal amount of the Series 2015 Notes, through the issuance of its sewer revenue bonds, in multiple series, to be purchased by the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Department of Environmental Protection Clean Water State Revolving Loan Fund (the "CWSRF"). The Issuer has received a commitment letter from the CWSRF (the "CWSRF Commitment Letter") to purchase the sewer revenue bonds from the City in the following not to exceed amounts on the following dates (collectively, the "CWSRF Bonds"):

<b>On or Before:</b>	<b>Amount:</b>
December 15, 2016	\$2,000,000.00
December 15, 2017	\$2,000,000.00
December 15, 2018	\$3,204,821.00

The Issuer will issue a series of CWSRF Bonds contemporaneously with the issuance of the Series 2015 Notes in the amount of \$679,519 (the "Series 2015 A CWSRF Bonds") the proceeds of which will be used to prepay all of the Issuer's outstanding Sewerage System Design Bond Anticipation Notes, Series 2013 A (The Huntington National Bank), issued in the original aggregate amount of \$800,000, dated September 20, 2013 (the "Series 2013 A Notes"), of which \$679,519 is currently outstanding. The Issuer has pledged to issue subsequent series of the CWSRF Bonds on or before each of the dates set forth above to pay the outstanding principal amount of the Series 2015 Notes.

The payment of principal of the Series 2015 Notes will be secured by the proceeds of the CWSRF Bonds (except for the Series 2015 A CWSRF Bonds issued contemporaneously therewith). The payment of the interest on the Series 2015 Notes will be secured by the Surplus Revenues derived from the existing public sanitary sewerage collection and treatment system of the Issuer and any extensions, improvements and betterments thereto (the "System"). The System is operated by the Nitro Regional Utility Board (the "Utility Board"). See "APPENDIX B – THE SYSTEM AND THE UTILITY BOARD."

\*Preliminary, subject to change.



The Prior Bonds (as hereinafter defined), the Series 2015 A CWSRF Bonds and each series of the CWSRF Bonds to be issued (and any additional parity bonds are collectively referred to herein as the "Prior Bonds"), have a lien on the Net Revenue of the System and the funds on deposit in the sinking funds and reserve accounts established for the Prior Bonds in the Ordinances authorizing the issuance of the Prior Bonds. THE SERIES 2015 NOTES DO NOT HAVE A LIEN ON THE NET REVENUES OF THE SYSTEM.

The Series 2015 Notes are special obligations of the Issuer. The Series 2015 Notes do not constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation on indebtedness, and the Issuer shall not be obligated to pay the Series 2015 Notes or the interest or any premium thereon except from the proceeds of the CWSRF Bonds (excluding the Series 2015 A CWSRF Bonds) and the Surplus Revenues of the System. Pursuant to the Ordinance, the Issuer has covenanted and agreed that the schedule or schedules of rates or charges from time to time in effect shall be sufficient to produce Net Revenues equal to not less than 115% of the Maximum Annual Debt Service on the Prior Bonds in any Fiscal Year. See "SECURITY FOR THE SERIES 2015 NOTES - Rate Covenant."

The Series 2015 Notes will be dated, will mature and will bear interest as more fully described under the heading "THE SERIES 2015 NOTES" herein. The Series 2015 Notes will initially be maintained under a book-entry system. So long as the Series 2015 Notes are maintained under a book-entry system, the manner of payment, the denominations, the transfer and exchange of ownership and the method of providing notice of redemption to the owners of the Series 2015 Notes shall be determined as described in "APPENDIX D - BOOK-ENTRY ONLY SYSTEM." If the book-entry system is discontinued, principal of, interest, and premium, if any, on the Series 2015 Notes will be payable by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (the "Paying Agent"), to the owners thereof at the address appearing in the books kept by The Huntington National Bank, as registrar (the "Registrar"). For further information describing the method of payment and other matters in the event the book-entry system is discontinued, see "THE SERIES 2015 NOTES" herein and "APPENDIX F - FORM OF ORDINANCE AND NOTES SUPPLEMENTAL RESOLUTION."

There are no outstanding obligations of the Issuer which will rank on parity with the Series 2015 Notes as to lien, pledge, source of and security for payment. See "SECURITY FOR THE NOTES – No Additional Liens on proceeds of CWSRF Bonds and Surplus Revenues." The Issuer may not issue additional obligations secured from the proceeds of the CWSRF Bonds or the Surplus Revenues of the System so long as any principal of the Series 2015 Notes is outstanding. The Issuer may issue additional bonds on a parity with the Prior Bonds while any principal amount of the Series 2015 Notes is outstanding for the purpose of (i) financing the costs of the construction of additions, betterments or improvements to the System by paying a portion or all of the Series 2015 Notes; (ii) refunding all or a portion of one or more series of the Prior Bonds; (iii) to pay claims which may exist against the revenues or facilities of the System; or (iv) all of such purposes, subject in each case to certain tests and conditions provided for in the Ordinance or the Prior Ordinances. See "SECURITY FOR THE NOTES -- Additional Parity Bonds."

Brief descriptions of the Series 2015 Notes, the Project, the System, the Ordinance, certain provisions of the Act and the Undertaking (as hereinafter defined) are set forth in this Official Statement, as well as other information in the Appendices hereto. Such descriptions and information do not purport to be comprehensive or definitive. All references herein to the Ordinance, the Undertaking, the Act and other documents, statutes, reports or instruments are qualified in their entirety by reference to such documents, statutes, reports or instruments. References herein to the Series 2015 Notes are qualified in their entirety by reference to the forms thereof included in the Ordinance and the information with respect thereto included in the aforesaid documents. Capitalized terms used and not otherwise defined in this Official Statement have the respective meanings given to them in the Ordinance. See "APPENDIX F - FORM OF ORDINANCE AND NOTES SUPPLEMENTAL RESOLUTION."

PURPOSE AND PLAN OF FINANCING

The proceeds of the Series 2015 Notes will be held by The Huntington National Bank, as trustee (“the Trustee”), under the Notes Trust Indenture by and between the Trustee and the Issuer (the “Indenture”). Under the Indenture, the funds can only be advanced to pay Project costs. The owners of the Series 2015 Notes will have a lien on the proceeds held under the Indenture until expended.

**The Project**

The proceeds of the Series 2015 Notes will be used to temporarily finance of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing sanitary sewerage collection and treatment system of the City of Nitro, specifically including, but not limited to, the extension of service to approximately 94 customers in the Blakes Creek and Eastwood Acres areas, the replacement of sewer lines on Bailes Drive, the replacement of Pump Station No. 6, the installation of telemetry at eight major pump stations, the installation of storm sewers in the Pump Station No. 7 drainage area, relining an existing 42 inch clay tile brick sewer line and rehabilitation of manholes, replacement of existing belt filter press, replacement of existing sewer lines on Reeves Drive, relocation of approximately 200 hundred linear feet of the existing eight-inch force mains at the Poca High School pump station, and all appurtenances necessary therefor (collectively, the “Project”).

**Sources and Uses of Series 2015 Note Proceeds**

**Sources:**

Principal Amount of the Series 2015 Notes \$ \_\_\_\_\_  
[Net Original Issue Premium] \$ \_\_\_\_\_

**Total Sources of Funds** \$ \_\_\_\_\_

**Uses:**

Deposit to Construction Trust Fund \$ \_\_\_\_\_  
Deposit to Costs of Issuance Fund <sup>1</sup> \$ \_\_\_\_\_

**Total Uses of Funds** \$ \_\_\_\_\_

THE SERIES 2015 NOTES

The Series 2015 Notes are dated the date of delivery. All Series 2015 Notes shall bear interest from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Series 2015 Notes has been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Series 2015 Notes shall be in default, Series 2015 Notes issued in exchange for Series 2015 Notes surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Series 2015 Notes surrendered. The Series 2015 Notes will bear interest

<sup>1</sup> Includes Underwriter’s discount, legal and financing fees, bond counsel fees, underwriter’s counsel fees, accounting, trustee fee, registrar’s fee and other miscellaneous expenses relating to the issuance of the Series 2015 Notes.

from their date, payable semiannually on each January 1 and July 1 in each year (each an “Interest Payment Date”), commencing July 1, 2016.

The Series 2015 Notes will be issued as fully registered Series 2015 Notes without coupons, in denominations of \$5,000 or any integral multiples thereof for any year of maturity. Interest on the Series 2015 Notes shall be payable by check or draft made payable and mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the “Paying Agent”), to the Registered Owner thereof as of the applicable Record Date (each December 15 and June 15) or, at the option of any Registered Owner of \$1,000,000 or more of the Series 2015 Notes, by wire transfer to a domestic bank account specified in writing at least 5 days prior to the Record Date by such Registered Owner. Principal of and interest and premium, if any, on the Series 2015 Notes shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender thereof at the principal corporate trust office of the Paying Agent.

Ownership of any Note may be transferred only by transfer of registration presented to the Registrar by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his duly authorized attorney or legal representative. Upon any such transfer of a Series 2015 Note, there will be issued another Series 2015 Note or Series 2015 Notes, at the option of the Holder or transferee, of the aggregate principal amount equal to the unpaid amount of the transferred Series 2015 Note and of the same series, interest rate and maturity of said transferred Series 2015 B Bond. For every exchange or transfer of Series 2015 Notes, the Registrar may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer. Any applicable tax, governmental charge or charge to reimburse the Registrar for any tax or governmental charge shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such transfer or exchange. The Registrar shall not be obliged to make any such transfer or exchange of Series 2015 Notes that have been called for redemption.

The Series 2015 Notes are available in book-entry form only. See “BOOK-ENTRY ONLY SYSTEM” below and “APPENDIX D – BOOK-ENTRY ONLY SYSTEM.” So long as Cede & Co. is the registered owner of the Series 2015 Notes as nominee of The Depository Trust Company, New York, New York, references herein to the Bondholders or registered owners of the Series 2015 Notes shall mean Cede & Co. and shall not mean the beneficial owners of the Series 2015 Notes.

#### BOOK-ENTRY ONLY SYSTEM

Purchasers of the Series 2015 Notes will not receive certificates representing their interests in the Series 2015 Notes purchased. The Series 2015 Notes will be registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York. SEE “APPENDIX D– BOOK-ENTRY ONLY SYSTEM.”

#### **No Assurance Regarding DTC Practices**

Neither the Issuer nor the Utility Board can or does give any assurances that DTC, the Direct Participants or the Indirect Participants will distribute to the Beneficial Owners of the Series 2015 Notes (1) payments of principal of or interest and premium, if any, on the Series 2015 Notes, (2) confirmation of beneficial ownership interest in the Series 2015 Notes, or (3) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Series 2015 Notes, or that they will do so on a timely basis, or that DTC, Direct Participants or Indirect Participants will serve and act in the manner described in this Official Statement. The current “rules” applicable to DTC are on file with the Securities and Exchange Commission, and the current “procedures” of DTC to be followed in dealing with Direct Participants are on file with DTC.

None of the Issuer, the Utility Board or the Paying Agent shall have any responsibility or obligation to any Direct Participant, Indirect Participant, Beneficial Owner or any other person with respect to (1) the accuracy of any records maintained by DTC or any Participant; (2) the payment by DTC or any Participant of any amount due to any Beneficial Owner in respect of the principal amount or redemption price of or interest on the Series 2015 Notes; (3) the delivery by DTC or any Participant of any notice to any Beneficial Owner which is required or permitted under the terms of the Ordinance to be given to Bondholders; or (4) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of the Series 2015 Notes.

## SECURITY FOR THE SERIES 2015 NOTES

The Series 2015 Notes are special obligations of the Issuer and are payable as to principal, premium, if any, and interest solely from the sources described below. The Issuer is under no obligation to pay the Series 2015 Notes except from said sources.

### **Outstanding Prior Bonds**

The Issuer has outstanding the following Sewer Revenue Bonds payable from the Net Revenues of the System that are senior and superior to the Series 2015 Notes: (i) Sewer Revenue Bonds, Series 1996 A (West Virginia Water Development Authority), dated December 10, 1996, issued in the original aggregate principal amount of \$4,575,502 (the "Series 1996 A Bonds"), of which approximately \$807,912 is currently outstanding; (ii) Sewer Revenue Bonds, Series 2000 A (West Virginia Water Development Authority), dated June 28, 2000, issued in the original aggregate principal amount of \$2,050,000 (the "Series 2000 A Bonds"), of which approximately \$1,110,395 is currently outstanding; (iii) Sewer Revenue Bonds, Series 2001 A (West Virginia SRF Program), dated June 5, 2001, issued in the original aggregate principal amount of \$543,800 (the "Series 2001 A Bonds"), of which approximately \$299,072 is currently outstanding; (iv) Sewer Revenue Bonds (West Virginia SRF Program), Series 2009 A, dated November 12, 2009 (the "Series 2009 A Bonds"), issued in the original aggregate principal amount of \$1,910,778, of which approximately \$1,528,618 is currently outstanding; (v) Sewer Revenue Bonds, Series 2015 A, to be issued contemporaneously with the Series 2015 Notes, (the "Series 2015 A CWSRF Bonds"), in the original aggregate principal amount of \$679,519.00; and (vi) the CWSRF Bonds to be issued after the date of issuance of the Series 2015 Notes (collectively, the "Prior Bonds"). The ordinances pursuant to which the Prior Bonds were issued, or will be issued, are hereinafter collectively referred to as the "Prior Ordinances."

### **Sources of Payment**

The payment of the principal on the Series 2015 Notes shall be secured forthwith equally and ratably by a first lien on the proceeds of the CWSRF Bonds (excluding the Series 2015 A CWSRF Bonds"). The payment of the interest on the Series 2015 Notes is secured by a sole first lien on the Surplus Revenues of the System. THE SERIES 2015 NOTES DO NOT HAVE A LIEN ON THE NET REVENUES OF THE SYSTEM.

### **Rate Covenant**

The schedule or schedules of rates and charges for the System 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 and accounts created under the Ordinance for the Prior Bonds. Such schedule or schedules of rates and charges shall be revised from time to time, 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 covenants and agrees in the Ordinance that the schedule or schedules of rates or charges from time to time in effect shall be sufficient to produce Net Revenues equal to not less than 115% of the Maximum Annual Debt Service on the Prior Bonds in any Fiscal Year. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System. See "APPENDIX B - THE SYSTEM AND THE UTILITY BOARD" and "APPENDIX G - RATE TARIFF."

## **Application of Gross Revenues**

The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the Issuer in the Revenue Fund. The Revenue Fund shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. All Revenues at any time remaining on deposit in the Revenue Fund shall be disposed only in the following manner and order of priority:

(1) The Issuer shall first, each month, pay from the Revenue Fund the current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission for deposit in the Sinking Funds of the Prior Bonds, the amounts required by the Prior Ordinances to pay the interest on the Prior Bonds.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission for deposit in the Sinking Funds of the Prior Bonds, the amounts required by the Prior Ordinances to pay the principal of the Prior Bonds.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission for deposit in the Reserve Accounts of the Prior Bonds, the amount required by the Prior Ordinances. Amounts in the Reserve Accounts for the Prior Bonds shall be used only for the purpose of making payments of principal of and interest on the respective Prior Bonds when due, when amounts in respective Sinking Funds for the Prior Bonds are insufficient therefor and for no other purpose.

(5) The Issuer shall next, from the monies remaining in the Revenue Fund, on the first day of each month, transfer to the Renewal and Replacement Fund a sum equal to not less than 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinances and not in addition thereto), exclusive of any payments for account of any Reserve Account for the Prior Bonds. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, or improvements or extensions to the System; provided, that any deficiency in any Reserve Account for the Prior Bonds, 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 thereof, shall be promptly eliminated with monies from the Renewal and Replacement Fund.

(6) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Bond Commission, commencing seven (7) months prior to the first interest payment date of the Series 2015 Notes, for deposit in the Series 2015 Notes Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 2015 Notes on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2015 Notes Sinking Fund and the next ensuing semiannual interest payment date is more 7 or less than seven (7) months, then such monthly payments shall be decreased or increased proportionately to provide, one (1) month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided, further, that there shall be credited against the amount deposited any interest capitalized from the proceeds of the Series 2015 Notes and applied to such payment.

## **Enforcement of Collections**

The Issuer covenants in the Ordinance to 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 and other charges that shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State. Such fees, rentals and charges, if not paid when due, shall, to the extent allowed by the Act, become a lien on the premises served by the System.

The Issuer further covenants and agrees that it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services and facilities of the System and will not restore such services of the System until all billing for charges for the services and facilities of the System, including penalties and reconnect fees, have been fully paid, or a payment agreement in compliance with the West Virginia Public Service Commission regulations has been entered.

## **Additional Prior Bonds**

While any of the principal amount of the Series 2015 Notes are outstanding, Additional Parity Bonds payable out of the Net Revenues of the System may be issued for the purpose of: (i) paying the Series 2015 Notes and/or financing the costs of the construction of additions, betterments or improvements to the System; (ii) refunding all or a portion of one or more series of Prior Bonds; (iii) paying claims which may exist against the revenues or facilities of the System; or (iv) all of such purposes.

## **No Additional Liens on Proceeds of CWSRF Bonds and Surplus Revenues**

So long as any of the principal amount of the Series 2015 Notes is outstanding, the Issuer may not issue any obligation secured by, or otherwise pledge, the proceeds of the CWSRF Bonds or the Surplus Revenues except for payment of the principal and interest on Series 2015 Notes.

## **Special, Limited Obligations**

The Series 2015 Notes do not constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation on indebtedness. No registered owner of any Series 2015 Note shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2015 Notes or the interest or any premium thereon.

## **THE ISSUER**

The City of Nitro is located in Kanawha and Putnam Counties, along the Kanawha River, just off Interstate 64 in the western portion of the State of West Virginia with an estimated population of 6,837 as of July, 2014.

## **Government**

The Issuer was first organized as the Town of Nitro in 1917 and presently operates under the strong mayor form of government pursuant to a charter adopted as of February 20, 1932. The City is governed by a seven-member City Council each member of which is elected to a four-year term by the voters of the City.

## **Information Regarding Issuer**

The principal of the Series 2015 Notes will be secured by the proceeds of the CWSRF Bonds (excluding the Series 2015 A CWSRF Bonds), and the interest on the Series 2015 Notes will be secured from the Surplus Revenues of the System, which are pledged to their payment. No other funds of the Issuer are available or expected

to be used to pay the principal of, or interest on, the Series 2015 Notes. Information regarding the Issuer has not been included in this Official Statement; provided, that the audited financial statements of the Issuer for the fiscal year ended June 30, 2014 are included in Appendix C hereto. See “APPENDIX C – FINANCIAL STATEMENTS OF THE CITY OF NITRO.”

#### THE SYSTEM AND THE UTILITY BOARD

The sewerage system of the Issuer has been operated under the control of the Utility Board since 1958. Pursuant to Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended, and an ordinance of the City council of the Issuer adopted on March 4, 1958, custody, administration, operation and maintenance of the System were placed under the supervision and control of the Utility Board. Pursuant to the Act, City Council retains the power to establish and maintain rates and charges for the use of services provided by the System and to issue revenue bonds and other obligations secured by the revenues and assets of the System for the purposes of the System.

For information regarding the Utility Board and the System, including the applicable rates, see “APPENDIX B - THE SYSTEM AND THE UTILITY BOARD,” “APPENDIX C - FINANCIAL STATEMENTS OF THE CITY OF NITRO,” and “APPENDIX G - RATE TARIFF.”

#### **Coverage Ratios**

Under certain Prior Ordinances, the Issuer has covenanted to collect fees and charges such that Net Revenues available for debt service are not less than 115% of the average annual debt service on the Prior Bonds. Under the Ordinance, the Issuer has covenanted that the schedule or schedules of rates or charges from time to time in effect shall be sufficient to produce Net Revenues equal to not less than 115% of the Maximum Annual Debt Service on the Prior Bonds in any Fiscal Year.

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DEBT SERVICE COVERAGE

	FY 2013	FY 2014	FY 2015	ProForma FY 2016	ProForma FY 2017	ProForma FY 2018
Operating Revenues	\$ 1,910,386	\$ 2,049,728	\$ 2,144,525	\$ 2,167,667	\$ 2,190,809	\$ 2,216,088
Operating Expenses	\$ (1,983,505)	\$ (2,027,147)	\$ (1,988,620)	\$ (2,088,051)	\$ (2,192,454)	\$ (2,380,445)
Operating Income	\$ (73,119)	\$ 22,581	\$ 155,905	\$ 79,616	\$ (1,645)	\$ (164,357)
LESS:						
Administrative Bond Fees	\$ 4,175	\$ 4,175	\$ -	\$ 7,061	\$ 14,336	\$ 25,872
ADD:						
Depreciation Expense	\$ 520,899	\$ 485,774	\$ 453,721	\$ 601,721	\$ 749,721	\$ 815,588
Interest Expense	\$ 31,104	\$ 37,819	\$ 43,306	\$ 106,791	\$ 127,876	\$ 22,185
Other Income	\$ 98,700	\$ 89,600	\$ 91,343	\$ 95,000	\$ 95,000	\$ 98,700
Amount Available for Debt Service	\$ 581,759	\$ 639,949	\$ 744,275	\$ 890,189	\$ 985,288	\$ 797,988
Debt Service	\$ 451,704	\$ 457,144	\$ 485,079	\$ 430,615	\$ 182,000	\$ 538,185
Calculated Debt Service Coverage	129%	140%	153%	207%	541%	148%

Source: Nitro, WV Audits and Rule 42 dated 6-17-14

**ProForma Assumptions:**

Note #1: 1996 Bonds to be paid with debt service reserve fund in June, 2016. No interest allocated on the 1996 Bonds in FY2017

Note #2: FY2016 revenue increase attributed to 50% of new customer billings; FY2017 revenue increase attributed to 100% of new customer billing

Note #3: Operating Expenses increase by a flat 5% each year

Note #4: Administrative Bond Fees are included in the Operating Expenses; FY2016 forward are the net increase in Bond Fees



## DEBT SERVICE REQUIREMENTS

The following table sets forth for each fiscal year during which the Series 2015 Notes will be outstanding, beginning Fiscal Year 2016 (July 1, 2015 – June 30, 2016), the amounts payable from Surplus Revenues and proceeds of the CWSRF Bonds (excluding the Series 2015 A CWSRF Bonds):

### Net Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
7/1/2016	-	-	_____	_____
1/1/2017	2,000,000.00*	___ %	_____	_____
7/1/2017	-	-	_____	_____
1/1/2018	2,000,000.00*	___ %	_____	_____
7/1/2018	-	-	_____	_____
1/1/2019	2,720,000.00*	___ %	_____	_____
<b>Total</b>	<b>\$6,720,000.00*</b>	<b>-</b>	<b>\$ _____</b>	<b>\$ _____</b>

\*Preliminary, subject to change.

## INVESTMENT CONSIDERATIONS

*The following discussion of investment considerations is not meant to be an exhaustive list of the considerations relating to the purchase of the Series 2015 Notes, and the order in which the factors are described does not necessarily reflect the relative importance of the various factors.*

### **Special, Limited Obligations**

The Series 2015 Notes are special, limited obligations of the Issuer, secured by proceeds of the CWSRF Bonds (except for the Series 2015 A CWSRF Bonds issued contemporaneously therewith), the interest on the Series 2015 Notes is secured and payable from the Surplus Revenues of the System and from funds on deposit in the Series 2015 Notes Payment Fund. The obligation of the Issuer to pay debt service on the Series 2015 Notes does not constitute an obligation of the Issuer to levy or pledge any form of taxation or for which the Issuer has levied or pledged any form of taxation, and the Issuer shall not be obligated to pay the Series 2015 Notes, or premium, if any, or the interest thereon, except from such Net Revenues and such funds on deposit in the Series 2015 Notes Payment Fund for the Series 2015 Notes. The pledge is only of the Surplus Revenues, meaning that the operation and maintenance expenses and the Prior Bonds are paid prior to debt service.

### **Financial Difficulties of the Issuer**

The Series 2015 Notes are secured by the CWSRF Bonds (except for the Series 2015 A CWSRF Bonds issued contemporaneously therewith), the interest on the Series 2015 Notes is secured and payable from the Surplus Revenues of the System and from funds on deposit in the Series 2015 Notes Payment Fund. No other funds of the Issuer are available or expected to be used to pay the Notes. Likewise, the Gross Revenues of the System are not used for other purposes of the Issuer. Accordingly, detailed information regarding the Issuer has not been included in this Official Statement. However, although operated by the Utility Board, the System is owned by and constitutes an asset of the Issuer. As such, any severe financial difficulties of the Issuer could adversely affect the market value of the Series 2015 Notes.

### **Future Legislation**

Current or future legislative proposals, if enacted into law, may cause interest on the Series 2015 Notes to be subject, directly or indirectly, to federal income taxation or otherwise prevent holders of the Series 2015 Notes from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals may also affect the market price for, or marketability of, the Series 2015 Notes. Prospective purchasers of the Series 2015 Notes should consult their own tax advisors regarding any such pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

It is not an event of default on the Series 2015 Notes if any legislation is enacted reducing or eliminating the exclusion of interest on state and local government Bonds from gross income for federal income tax purposes.

### **The Public Service Commission of West Virginia**

In West Virginia, sewerage utilities such as the System are subject to regulatory oversight by the Public Service Commission of West Virginia (the "Commission") in certain situations. Specifically, pursuant to Chapter 24, Article 2, Section 11 of the Code of West Virginia, 1931, as amended, utilities must obtain a certificate of public convenience and necessity prior to proceeding to construction for projects which are outside of "the usual course of business." Additionally, rate increases enacted by the Council of the Issuer are subject to review by the Commission for regulatory "notice" requirements and, under certain circumstances, the actual enacted rates. Municipal sewerage utilities in West Virginia do not have the ability to adjust rates without the possibility of regulatory review by the Commission. The parameters surrounding this review are discussed below. Such regulatory review may delay or halt the

implementation of rate increases which could cause the utility to fail to meet rate covenants or produce revenue sufficient to pay debt service.

The Commission has two levels of review. Most cases are initially assigned to an administrative law judge (“ALJ”) for decision. The Commission employs a “staff” comprised of engineers, lawyers and financial analysts (the “Staff”) to review cases and make recommendations. The Issuer is also permitted to make recommendations, as are other parties who are granted “intervenor” status. The ALJ may conduct a hearing, at which evidence is presented and witnesses for all parties may be cross-examined, after which a recommended decision is issued. Any party to the underlying proceeding, including a party granted intervenor status, may take exception to the recommended decision of the ALJ, in which case the matter is referred to the full Commission for decision.

### **Commission Regulatory Oversight of Rate Increases**

Pursuant to Chapter 8, Article 11, Section 4, Chapter 16, Article 13, Section 16, and Chapter 24, Article 2, Section 4b of the Code of West Virginia, 1931, as amended, the Council of the Issuer has the ability to establish rates for the sewerage utility through the enactment of an ordinance, following a public hearing on such ordinance. In the enactment of such an ordinance, the Issuer must comply with regulations of the Commission related to providing notice of such proposed rate increase. The Commission reviews the compliance of the Issuer with such regulations and, if the Commission determines that the Issuer has failed to satisfy the requirements of the regulations, the Commission may declare the rate ordinance invalid.

In such instance, the Issuer would have no choice but to reenact the ordinance.

### **Commission Review of Proposed Rate Increases**

Once enacted by the Issuer, the proposed rates are subject to review by the Commission under the following scenario: Any customer aggrieved by the changed rates or charges who presents to the Commission a petition signed by not less than 25% of the customers served. A customer must file such a petition within 30 days after enactment of the sewer rate ordinance.

If the above occurs, the Commission then takes “jurisdiction” over the rates, initiating an investigation into the reasonableness of the enacted rates. Pursuant to Chapter 24, Article 2, Section 4b of the Code of West Virginia, 1931, as amended (the “PSC Act”), the rates enacted by the Issuer are suspended for 120 days from the date the rates would otherwise have gone into effect (i.e., immediately upon enactment if the rate increase results in an increase of less than 25% of the gross revenue of the utility; otherwise, 45 days from enactment of the rate ordinance) and the new rates, if any, established by the Commission will go into effect at that end of the suspension period.

### **Potential Delays for the Implementation of Rate Increases**

Generally, the process of enacting a rate ordinance requires a minimum of two weeks (two readings by Council, separated by sufficient time to allow for the publication of two legal notices prior to the public hearing and second reading, with the first publication occurring not less than 10 days prior to the public hearing and second reading date). Pursuant to the PSC Act and regulations of the Commission, the rates can go into effect immediately upon enactment if the rate increase results in an increase of less than 25% of the gross revenue of the utility; provided, however, that revenues collected from rates put into effect upon enactment may be subject to refund if the rates are subsequently disapproved or modified by the Commission in an appeal proceeding. If the rate increase is greater than 25% of the gross revenue of the utility, then the new rates cannot go into effect any sooner than 45 days from the date of enactment, provided that an appeal of the proposed rates does not occur. In the event that the Commission takes jurisdiction of the rate increase, the Commission will establish a decision due date for the ALJ that is generally 30 days prior to the end of the 120-day suspension period. If any of the parties, however, appeal the ALJ’s recommended decision to the full Commission, the Commission must render its decision no later than the end of the 120-day suspension period.

A final decision of the Commission may be appealed to the Supreme Court of Appeals of West Virginia, which Court has no statutory time frame within which to render a decision. While a party does have the right to appeal a Commission decision, the Supreme Court of Appeals of West Virginia has “previously held, in deference to the Commission’s expertise, that the Court will not substitute [its] judgment for that of the Commission on controverted evidence. However, findings of fact made by the Commission will be overturned as clearly wrong when there is no substantial evidence to support them.” *Berkeley Utils., Inc. v. Pub. Serv. Comm’n of W. Va.*, 227 W. Va. 589, 595, 712 S.E.2d 498, 504 (2011) (quoting *Chesapeake and Potomac Tel. Co. of W. Va. v. Pub. Serv. Comm’n of W. Va.*, 171 W. Va. 494, 498, 300 S.E.2d 607, 611 (1982)). In other words, the Court gives significant deference to decisions of the Commission. Commission-approved rates may be charged (provided that the applicable suspension period has ended) during an appeal to the Supreme Court of Appeals of West Virginia. If the appealing party prevails and new rates are established by the court, the new rates apply prospectively.

Consequently, the time period from the first reading of a rate ordinance to the increased rates being charged to the customers is a minimum of 14 days, and if the Commission takes jurisdiction, can exceed 180 days (Commission approved rates are billable during an appeal to the Supreme Court of Appeals of West Virginia). From the date the new rates begin to be charged, the Issuer should realize revenues in approximately 45 to 60 days. Resale customers are required to obtain authorization from the Commission for any necessary increase in resale rates. Such increases are often granted by the Commission after the rates for the Issuer go into effect, which means no assurance exists that resale customers will have sufficient revenues to begin paying the increased resale rates. The Commission can, and has on occasion, pre-approved resale rate increases in advance of the effective date of the new rates. As a result, resale customers may have the ability to begin charging the new resale rates of the Issuer as soon as the rates go into effect.

#### **Test Year**

If the Commission takes jurisdiction over a municipality’s rate ordinance as described above, the regulations of the Commission require a municipality to file “financial justification” for the enacted rate increase. This financial justification must be based on financial data from the most recent actual audited or finally closed 12-month period ending on a calendar quarter, also known as the “test year.” Events which occur outside the test year are not generally permitted in the rate adjustment. A determination at the end of any 12-month period that a rate increase is necessary may not result in increased rates and collections for nine months or more from the end of that period.

The Issuer has the option to proceed with a rate increase at any time during the course of the year; however, the financials examined by the Commission will be the financials for the most recent full fiscal year, not the 12-month period immediately preceding the date of the request.

#### **Reliance on “Known and Measurable” Adjustments**

When considering adjustments to the rates of a utility for costs occurring during the “test year,” the Commission’s regulations require that the need for, and amount of, such adjustments be based on information that is “known and measurable.” As a result, a change in revenues or expenses must, in most cases, have occurred in the test year being analyzed. If an increase in a cost, or a decline in revenue, is anticipated for the coming year, the Commission generally will not take such change into account for rate-making purposes unless the change occurs during the test year.

As a result of the requirement that the support for adjustments be “known and measurable,” the Commission will generally not allow multi-year rate increases to address anticipated inflation or drops in customer usage. Therefore, the Issuer must initiate the rate ordinance process, and potential Commission review, whenever increased costs or decreased revenues necessitate a rate increase.

## **Emergency Rate Increase**

In the event the Commission takes jurisdiction of a rate increase, the PSC Act permits the Issuer to request “emergency rates” if it is in “financial distress.” Financial distress has been defined by the Commission to mean the utility is unable to pay operation and maintenance expenses and the principal and interest on the utility’s debt obligations. Such rates, however, are subject to refund, in the event the Commission determines that the emergency rates, or any portion thereof, are not warranted. Generally, emergency rates CANNOT be obtained to meet coverage requirements in bond documents.

## **Working Capital Reserve**

Pursuant to Chapter 24, Article 1, Section 1(k) of the Code of West Virginia, 1931, as amended, effective June 12, 2015, the System is required to “. . . maintain a working capital reserve in an amount of no less than one eighth of actual annual operation and maintenance expense. This reserve shall be separate and distinct from and in addition to any repair and replacement fund that may be required by bond covenants.” Neither the Legislature nor the Commission have provided guidance on the specifics of the term “maintain” as to whether it is expected that the City will have to have, at all times, sufficient funds on hand to satisfy the “one eighth of actual annual operation and maintenance expense” and whether such language is subject to an ongoing or annual test. The City has, as required by State law, previously adopted a budget for the System for the 2015-2016 fiscal year. The City will budget for the working capital reserve in future fiscal years. In the event that any audited or un-audited fiscal year-end financial statement of the System shall find that the working capital reserve for such fiscal year was insufficient, such finding shall not be a default on the Series 2015 Notes.

## **Annual Municipal Audit**

Pursuant to Chapter 6, Article 9 of the Code of West Virginia, 1931, as amended (the “Audit Act”), the State Auditor, as the chief inspector and supervisor of public offices (the “Chief Inspector”) is charged with the responsibility of (1) formulating, prescribing and installing a system of accountability for all local units of government in West Virginia, including municipalities, and (2) examining the financial affairs of every local government office or political subdivision and all boards, commissions, authorities, agencies or other offices. The Issuer is a local government under the Audit Act. Accordingly, pursuant to Section 7 of the Audit Act, an audit of the Issuer’s finances must be accomplished by the Chief Inspector or any person appointed by him. Accordingly, the actions or lack of actions of the Chief Inspector may adversely impact the ability to have the annual audited financial information required to be submitted to EMMA pursuant to the Continuing Disclosure Agreement. See “CONTINUING DISCLOSURE” herein. Additionally, the Issuer has no power to require the Chief Inspector to take any action required under such procedures that would ensure the completion of the audit to meet the timely filing of such information.

## **Limitation on Remedies and Limited Recourse on Default**

The remedies available to the owners of the Series 2015 Notes upon the occurrence of an event of default with respect to the Series 2015 Notes are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain.

In addition, the rights and remedies of the owners of the Series 2015 Notes under the Ordinance and state law may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditor’s rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against cities and Utility Boards in the State of West Virginia. The opinions delivered by Bond Counsel concurrently with the issuance of the Series 2015 Notes will be subject to such limitations and the various legal opinions to be delivered concurrently with the issuance of the Series 2015 Notes will be similarly qualified. See “APPENDIX E – PROPOSED FORM OF BOND COUNSEL OPINION.”

## **Secondary Market for Notes**

There can be no guarantee that there will be a secondary market for the Series 2015 Notes or, if a secondary market exists, that any Series 2015 Notes can be sold for any particular price. Occasionally, because of general market conditions or because of adverse history or economic prospects connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Accordingly, prices of issues for which a market is being made will depend upon then-prevailing circumstances. Such prices could be substantially different from the original purchase price.

## **LITIGATION**

There is no litigation or other proceeding pending or, to the knowledge of the Issuer, threatened to restrain or enjoin the issuance, sale, or delivery of the Series 2015 Notes, or in any way contesting the validity or enforceability of the Series 2015 Notes, or the proceedings pursuant to which the Series 2015 Notes are issued.

## **LEGAL MATTERS**

Legal matters incident to the authorization, issuance and sale of the Series 2015 Notes are subject to the unqualified approving opinion of Jackson Kelly PLLC, Bond Counsel, whose opinion will be delivered concurrently with the delivery, upon original issuance, of the Series 2015 Notes. Certain legal matters will be passed upon for the Issuer by Johnnie Brown, Esquire, City Attorney. Steptoe & Johnson PLLC will pass upon certain matters as counsel for the Underwriter.

## **TAX MATTERS**

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, PROSPECTIVE HOLDERS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES IN THIS OFFICIAL STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY HOLDERS OF THE SERIES 2015 NOTES FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON SUCH HOLDERS UNDER THE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) PROSPECTIVE HOLDERS OF THE NOTES SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

The following discussion of Tax Matters is a brief description of certain income tax matters with respect to the Series 2015 Notes existing under applicable law. It does not purport to deal with all aspects of taxation that may be relevant to an owner of Notes. Prospective investors, particularly those who may be subject to special rules, are advised to consult their own tax advisors regarding the tax consequences of owning and disposing of the Series 2015 Notes. The following discussion is not binding on the Internal Revenue Service ("IRS"), any state or municipal tax authority, or any court. It represents Jackson Kelly PLLC's (hereafter "Bond Counsel") legal judgment as to the excludability of interest on the Series 2015 Notes from gross income for federal income tax purposes, but is not a guarantee of that conclusion.

### **Federal Income Tax Exemption of the Series 2015 Notes**

In the opinion of Bond Counsel, based upon an analysis of existing laws, regulations, published rulings and judicial decisions, as presently written and applied, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series 2015 Notes is excludable from gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Code. Bond Counsel is of the further opinion that interest on the Series 2015 Notes

will not be treated as a preference item for purposes of the federal alternative minimum tax imposed under the Code with respect to individuals and corporations. Under the Code, however, such interest is included in the adjusted current earnings of a corporation for purposes of computing the alternative minimum tax. A complete copy of the proposed form of opinion of Bond Counsel for the Series 2015 Notes is set forth in APPENDIX E – PROPOSED FORM OF BOND COUNSEL OPINION attached hereto.

### **Assumed Compliance with Certain Covenants and Federal Tax Requirements**

The opinion on federal tax matters with respect to the Series 2015 Notes is based on the accuracy of certain representations and certifications, and continuing compliance with certain covenants, of the Issuer contained in the transcript of proceedings and which are intended to evidence and assure the foregoing, including that the Series 2015 Notes are and will remain obligations the interest on which is excludable from gross income for federal income tax purposes. The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Series 2015 Notes. The Issuer has covenanted to take the actions required of it for the interest on the Series 2015 Notes to be and to remain excludable from gross income for federal income tax purposes and not to take any actions that would adversely affect that exclusion. Bond Counsel's opinion assumes the accuracy of the Issuer's certifications and representations and the continuing compliance with the covenants of the Issuer. Noncompliance with these covenants by the Issuer may cause the interest on the Series 2015 Notes to be included in gross income for federal income tax purposes retroactively to the date of issuance of the Series 2015 Notes. After the date of issuance of the Series 2015 Notes, Bond Counsel will not undertake to determine (or to so inform any person) whether any actions taken or not taken, or any events occurring or not occurring, or any other matters coming to Bond Counsel's attention, may adversely affect the exclusion from gross income for federal income tax purposes of interest on the Series 2015 Notes or the market prices of the Series 2015 Notes. Further, no assurance can be given that pending or future legislation or amendments to the Code, if enacted into law, or any proposed legislation or amendments to the Code, will not adversely affect the value of, or the tax status of interest on, the Series 2015 Notes. Prospective purchasers of Bonds are urged to consult their own tax advisors with respect to proposals to restructure the federal income tax.

The tax status of the Series 2015 Notes could be affected by post-issuance events. There are various requirements of the Code that must be observed or satisfied after the issuance of the Series 2015 Notes in order for the Series 2015 Notes to qualify for, and retain, tax-exempt status. These requirements include those relating to use of the proceeds of the Series 2015 Notes, use of the Project financed by the Series 2015 Notes, investment of bond proceeds, and the rebate of so-called excess arbitrage earnings. Compliance with these requirements is the responsibility of the Issuer.

The IRS conducts an audit program to examine compliance with the requirements regarding tax-exempt status. If the Series 2015 Notes become the subject of an audit, under current IRS procedures, the Issuer would be treated as the taxpayer, and the owners of the Series 2015 Notes would have limited rights to participate in the audit process. The initiation of an audit with respect to the Series 2015 Notes could adversely affect the market value and liquidity of the Series 2015 Notes, even though no final determination about the tax-exempt status would have been made. If an audit were to result in a final determination that the Series 2015 Notes do not qualify as tax-exempt obligations, such a determination could be retroactive in effect to the date of issuance of the Series 2015 Notes.

Certain requirements and procedures contained or referred to in the Ordinance, Indenture, the Tax Agreement and other relevant documents may be changed and certain actions (including, without limitation, defeasance of the Series 2015 Notes) may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents. Bond Counsel expresses no opinion as to any obligations, or the interest thereon if any such change occurs or action is taken or omitted upon the advice or approval of bond counsel other than Jackson Kelly PLLC.

## **[Original Issue Discount and Original Issue Premium**

To the extent the issue price of any maturity of the Series 2015 Notes is less than the amount to be paid at maturity of such Series 2015 Notes (excluding amounts stated to be interest and payable at least annually over the term of such Notes) ("Discount Notes"), the difference constitutes "original issue discount," the accrual of which, to the extent properly allocable to each beneficial owner thereof, is treated as interest on the Series 2015 Notes which is excludable from gross income for federal income tax purposes. For this purpose, the issue price of a particular maturity of the Series 2015 Notes is the first price at which a substantial amount of such maturity of the Series 2015 Notes is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The original issue discount with respect to any maturity of the Series 2015 Notes accrues daily over the term to maturity of such Series 2015 Notes on the basis of a constant interest rate compounded semiannually (or over a shorter permitted compounding interval selected by the owner). The accruing original issue discount is added to the adjusted basis of such Series 2015 Notes to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such Series 2015 Notes. A purchaser of a Discount Note in the initial public offering at a price for that Discount Note stated on the inside cover of this Official Statement who holds that Discount Note to maturity will realize no gain or loss upon the retirement of that Discount Note. Beneficial owners of the Series 2015 Notes should consult their own tax advisors with respect to the tax consequences of ownership of Notes with original issue discount, including the treatment of beneficial owners who do not purchase such Series 2015 Notes in the original offering to the public at the first price at which a substantial amount of such Series 2015 Notes is sold to the public.

Notes purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) ("Premium Notes") will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of bonds, like the Premium Notes, the interest on which is excludable from gross income for federal income tax purposes. However, the amount of tax-exempt interest received, and a beneficial owner's basis in a Premium Note, will be reduced by the amount of amortizable bond premium properly allocated to such beneficial owner. For purposes of determining the owner's gain or loss on the sale, redemption (including redemption at maturity) or other disposition of a Premium Note, the owner's tax basis in the Premium Note is reduced by the amount of bond premium that is amortized during the period of ownership. As a result, an owner may realize taxable gain for federal income tax purposes from the sale or other disposition of a Premium Note for an amount equal to or less than the amount paid by the owner for that Premium Note. A purchaser of a Premium Note in the initial public offering at the price for that Premium Note stated on the inside cover of this Official Statement who holds that Premium Note to maturity (or, in the case of a callable Premium Note, to its earlier call date that results in the lowest yield on that Premium Note) will realize no gain or loss upon the retirement of that Premium Note. Beneficial owners of the Series 2015 Notes should consult their own tax advisors with respect to the tax consequences of ownership of Notes with bond premium, including the treatment of beneficial owners who do not purchase such Series 2015 Notes in the original offering to the public at the first price at which a substantial amount of such Series 2015 Notes is sold to the public.]

## **Information Reporting and Backup Withholding**

As a result of the enactment of the Tax Increase Prevention and Reconciliation Act of 2005, interest on tax-exempt obligations such as the Series 2015 Notes are subject to information reporting in a manner similar to interest paid on taxable obligations. A recipient not otherwise exempt from information reporting who fails to satisfy the information reporting requirements will be subject to "backup withholding," which means that the payor is required to deduct and withhold a tax from the interest payment, calculated in the manner set forth in the Code. For the foregoing purpose, a "payor" generally refers to the person or entity from whom a recipient receives its payments of interest or who collects such payments on behalf of the recipient. In any event, backup withholding does not affect the excludability of the interest on the Series 2015 Notes from gross income for federal income tax purposes. Any amounts withheld pursuant to the backup withholding should be allowed as a refund or a credit against any owner's federal income tax once the required information is furnished to the IRS.



## **State Income Tax Exemption**

In the opinion of Bond Counsel, under the Act, as presently written and applied, the Series 2015 Notes, and all interest and income thereon, shall be exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

## **Individual Circumstances**

Although Bond Counsel is of the opinion that interest on the Series 2015 Notes is excludable from gross income for federal income tax purposes, the ownership or disposition of, or the accrual or receipt of interest on, the Series 2015 Notes may otherwise affect an owner's federal liability. The nature and extent of these other tax consequences will depend upon the particular tax status of the owner or the owner's other items of income or deduction. Bond Counsel expresses no opinion regarding any such other tax consequences. Ownership of the Series 2015 Notes may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, corporations subject to the branch profits tax, financial institutions, certain insurance companies, certain S corporations, individual recipients of Social Security or Railroad Retirement benefits and taxpayers who may be deemed to have incurred (or continued) indebtedness to purchase or carry the Series 2015 Notes. Bond Counsel will express no opinion regarding any such consequences.

## **Future Tax Changes**

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the Series 2015 Notes to be subject, directly or indirectly, to federal income taxation or cause the interest on the Series 2015 Notes to be subject to or not exempted from state income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals, clarification of the Code or court decisions may also affect the market price for, or marketability of the Series 2015 Notes. Prospective purchasers of the Series 2015 Notes should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel's judgment as to the proper treatment of the Series 2015 Notes for federal income tax purposes. It is not binding on the IRS or the courts. Furthermore, Bond Counsel cannot give and has not given any opinion or assurance about the future activities of the Issuer or about the effect of future changes in the Code, the application regulations, the interpretation thereof or the enforcement thereof by the IRS. The Issuer has covenanted, however, to comply with the requirements of the Code.

## **Designation of Qualified Tax-Exempt Obligations**

In the opinion of Bond Counsel, the Series 2015 Notes are "qualified tax-exempt obligations" and the provisions of the Code which disallow all deductibility of interest expenses incurred by financial institutions on debt incurred or continued to carry most tax-exempt obligations does not apply to the Series 2015 Notes; accordingly, 80% of the interest expense of a financial institution incurred for the purpose of purchasing or carrying the Series 2015 Notes is deductible for federal income purposes.

## **Bond Counsel Obligations**

Bond Counsel's engagement with respect to the Series 2015 Notes ends with the issuance of the Series 2015 Notes, and unless separately engaged, Bond Counsel is not obligated to defend the Issuer or the beneficial owners regarding the tax-exempt status of the Series 2015 Notes in the event of an audit examination by the IRS. Under current procedures, parties other than the Issuer and its appointed counsel including the beneficial owners, would have little, if any, right to participate in the audit examination

process. Moreover, because achieving judicial review in connection with an audit examination of the Series 2015 Notes would be difficult, obtaining an independent review of IRS positions with which the Issuer legitimately disagrees may not be practicable. Any action of the IRS, including but not limited to selection of the Series 2015 Notes for audit, or the course or result of such audit, or an audit of tax-exempt obligations presenting similar tax issues may affect the market price for, or the marketability of, the Series 2015 Notes, and may cause the Issuer or the beneficial owners to incur significant expense.

Bond Counsel's opinions represent its legal judgment based in part upon the representations and covenants referenced therein and its review of existing law, but are not a guarantee of result or binding on the IRS or the courts. Bond Counsel assumes no duty to update or supplement its opinions to reflect any facts or circumstances that may come to Bond Counsel's attention after the date of its opinions or to reflect any changes in law or the interpretation thereof that may occur or become effective after such date.

## UNDERWRITING

The Series 2015 Notes are being purchased by the Underwriter named on the cover of this Official Statement. The Note Purchase Agreement provides that the Underwriter will purchase all the Series 2015 Notes, if any are purchased, at a purchase price equal to the initial public offering prices set forth on the cover page hereof less an Underwriter's discount of \$ \_\_\_\_\_, plus [net original issue premium of \$ \_\_\_\_\_]. The obligation to make such purchase is subject to the terms and conditions set forth in the Note Purchase Agreement, including the approval of certain legal matters by counsel. The Underwriter may change the initial public offering prices from time to time. The Underwriter may offer and sell Series 2015 Notes to certain dealers (including dealers depositing Series 2015 Notes into investment trusts) and certain dealer banks acting as agents at prices lower than the public offering prices stated on the cover page hereof, and such public offering price also may be changed without prior notice, from time to time, by the Underwriter.

## FINANCIAL STATEMENTS

Included herein as Appendix C are the audited financial statements (and reports with respect thereto) of the Issuer as of June 30, 2014, prepared by the office of the West Virginia State Auditor (the "State Auditor"). The financial statements have been included herein in reliance upon the reports of the preparers thereof as experts in auditing and accounting.

## CONTINUING DISCLOSURE

The Issuer has agreed to an undertaking (the "Undertaking") for the benefit of the Registered Owners of the Series 2015 Notes to provide certain financial and operating information (the "Annual Financial Information") not later than the last day of the fiscal year (presently ending June 30) immediately following the end of the Issuer's fiscal year for which disclosure is due, commencing with the report for the fiscal year ending June 30, 2016, and to provide notice of the occurrence of enumerated events, all as further described in the Continuing Disclosure Agreement to be entered by the Issuer in substantially the form attached as Appendix H hereto. The Annual Financial Information and each notice of enumerated events are required to be filed electronically by The Huntington National Bank, as dissemination agent on behalf of the Issuer, with the Electronic Municipal Markets Access system ("EMMA").

This continuing disclosure obligation is being undertaken by the Issuer to assist the Underwriter in complying with Rule 15c2-12 promulgated by the SEC. The Issuer has agreed to give notice in a timely manner to EMMA. However, any such failure will not constitute a default under the terms of the Ordinance or the Series 2015 Notes. Under the Continuing Disclosure Agreement, the sole remedy for such failure is to seek an order for specific performance. See "APPENDIX H-FORM OF

CONTINUING DISCLOSURE AGREEMENT.” Registered Owners may contact the Mayor of the Issuer at (304) 755-0705 for more information.

#### MISCELLANEOUS

So far as any statements made in this Official Statement involve matters of opinion or estimates, whether or not expressly stated, they are set forth as such and not as representations of fact, and no representation is made that any of such statements will be realized. Neither this Official Statement nor any statement which may have been made orally or in writing is to be construed as a contract or agreement with the purchasers or owners of the Series 2015 Notes.

Copies of the Ordinance, the Undertaking, the Act and other applicable documents may be obtained from the Issuer at the following address:

City of Nitro  
2009 20th Street  
Nitro, West Virginia 25143

or, during the period of offering the Series 2015 Notes, from the Underwriter. Ongoing financial information may be obtained from the Issuer at the address set forth above.

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This Official Statement has been duly approved and its execution and distribution authorized by the Issuer.

**CITY OF NITRO, WEST VIRGINIA**

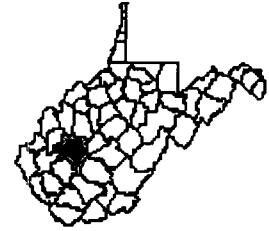
By: \_\_\_\_\_  
Mayor

**APPENDIX A**

**KANAWHA COUNTY AND PUTNAM COUNTY, ECONOMIC AND DEMOGRAPHIC DATA**

# APPENDIX A – General Information (Kanawha County)

Sources include: US Census  
City-Data.com  
www.stats.indiana.edu/



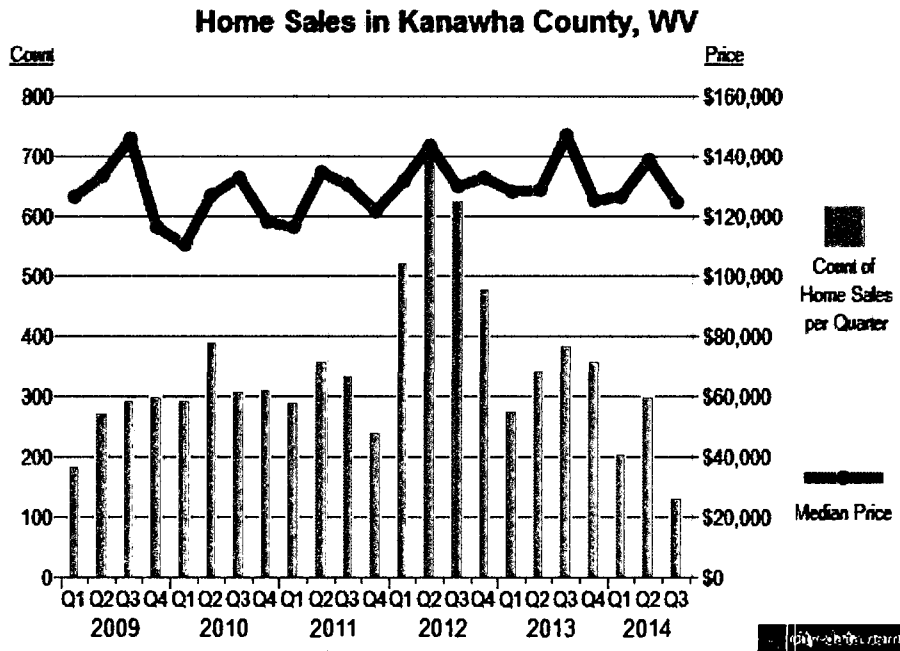
## OVERVIEW

**Kanawha County** is one of about 3,141 counties and county equivalents in the United States. It has 901.6 sq. miles in land area and a population density of 212.2 per square mile. On the most recent census form, 98.0% of the population reported only one race, with 7.3% of these reporting African-American. The population of this county is 0.9% Hispanic (of any race). The average household size is 2.30 persons compared to an average family size of 2.80 persons.

In 2013 health care and social assistance was the largest of 20 major sectors. It had an average wage per job of \$46,169. Per capita income grew by 8.5% between 2003 and 2013 (adjusted for inflation).

People & Income Overview (By Place of Residence)	Value	U.S. Rank
Population (2013)	191,275	335
Growth (%) since 2010 Census	-0.9%	1996
Households (2013)	82,756	294
Labor Force (persons) (2013)	88,295	357
Unemployment Rate (2013)	5.7	2207
Per Capita Personal Income (2013)	\$44,817	707
Median Household Income (2013)	\$45,858	1356
Poverty Rate (2013)	15.3	1749
H.S. Diploma or More - % of Adults 25+ (2013 ACS 5yr)	87.9	1,186
Bachelor's Deg. or More - % of Adults 25+ (2013 ACS 5yr)	25.0	668

## Housing:



## US Census Bureau - Quick Facts

### Kanawha County, West Virginia

People QuickFacts	Kanawha County	West Virginia
Population, 2014 estimate	190,223	1,850,326
Population, 2010 (April 1) estimates base	193,058	1,853,033
Population, percent change - April 1, 2010 to July 1, 2014	-1.5%	-0.1%
Population, 2010	193,063	1,852,994
Persons under 5 years, percent, 2014	5.6%	5.5%
Persons under 18 years, percent, 2014	20.5%	20.5%
Persons 65 years and over, percent, 2014	18.1%	17.8%
Female persons, percent, 2014	51.8%	50.6%
White alone, percent, 2014 (a)	88.9%	93.7%
Black or African American alone, percent, 2014 (a)	7.6%	3.6%
American Indian and Alaska Native alone, percent, 2014 (a)	0.2%	0.2%
Asian alone, percent, 2014 (a)	1.2%	0.8%
Native Hawaiian and Other Pacific Islander alone, percent, 2014 (a)	Z	Z
Two or More Races, percent, 2014	2.2%	1.6%
Hispanic or Latino, percent, 2014 (b)	1.1%	1.5%
White alone, not Hispanic or Latino, percent, 2014	88.0%	92.5%
Living in same house 1 year & over, percent, 2009-2013	87.5%	88.1%
Foreign born persons, percent, 2009-2013	1.5%	1.4%
Language other than English spoken at home, pct age 5+, 2009-2013	2.1%	2.4%
High school graduate or higher, percent of persons age 25+, 2009-2013	87.9%	83.9%
Bachelor's degree or higher, percent of persons age 25+, 2009-2013	25.0%	18.3%
Veterans, 2009-2013	16,579	159,448
Mean travel time to work (minutes), workers age 16+, 2009-2013	21.7	25.5
Housing units, 2014	92,420	884,605
Homeownership rate, 2009-2013	71.0%	73.4%
Housing units in multi-unit structures, percent, 2009-2013	17.8%	12.0%
Median value of owner-occupied housing units, 2009-2013	\$101,600	\$98,500
Households, 2009-2013	82,756	741,390
Persons per household, 2009-2013	2.29	2.43
Per capita money income in past 12 months (2013 dollars), 2009-2013	\$28,174	\$22,966
Median household income, 2009-2013	\$46,085	\$41,043

<b>Business QuickFacts</b>	<b>Kanawha County</b>	<b>West Virginia</b>
Private nonfarm establishments, 2013	5,185	37,573 <sup>1</sup>
Private nonfarm employment, 2013	87,931	575,987 <sup>1</sup>
Private nonfarm employment, percent change, 2012-2013	0.4%	-0.6% <sup>1</sup>
Nonemployer establishments, 2013	9,314	88,202
Total number of firms, 2007	14,196	120,381
Black-owned firms, percent, 2007	2.5%	S
American Indian- and Alaska Native-owned firms, percent, 2007	F	S
Asian-owned firms, percent, 2007	1.6%	1.3%
Native Hawaiian and Other Pacific Islander-owned firms, percent, 2007	F	0.0%
Hispanic-owned firms, percent, 2007	S	0.7%
Women-owned firms, percent, 2007	26.3%	28.1%
Manufacturers shipments, 2007 (\$1000)	D	25,080,573
Merchant wholesaler sales, 2007 (\$1000)	1,726,956	11,036,467
Retail sales, 2007 (\$1000)	2,947,318	20,538,829
Retail sales per capita, 2007	\$15,429	\$11,340
Accommodation and food services sales, 2007 (\$1000)	414,905	2,553,258
Building permits, 2014	296	2,677

<b>Geography QuickFacts</b>	<b>Kanawha County</b>	<b>West Virginia</b>
Land area in square miles, 2010	901.59	24,038.21
Persons per square mile, 2010	214.1	77.1
FIPS Code	039	54
Metropolitan or Micropolitan Statistical Area	Charleston, WV Metro Area	

1: Includes data not distributed by county.

(a) Includes persons reporting only one race.

(b) Hispanics may be of any race, so also are included in applicable race categories.

D: Suppressed to avoid disclosure of confidential information

F: Fewer than 25 firms

FN: Footnote on this item for this area in place of data

NA: Not available

S: Suppressed; does not meet publication standards

X: Not applicable

Z: Value greater than zero but less than half unit of measure shown

Source U.S. Census Bureau: State and County QuickFacts. Data derived from Population Estimates, American Community Survey, Census of Population and Housing, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits  
Last Revised: Wednesday, 23-Sep-2015 13:29:32 EDT

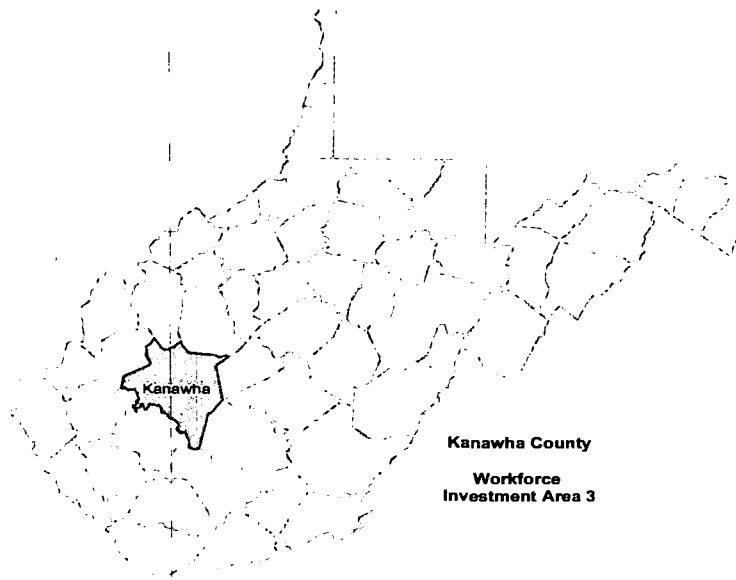
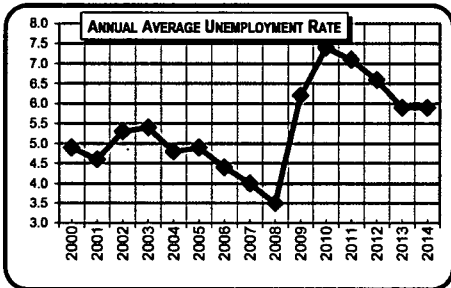
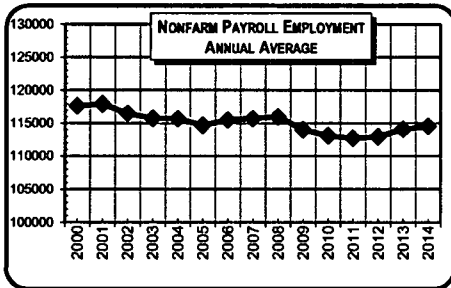


## Kanawha County

Employment and Wages Annual Averages	2014			2013		
	Emp.	Total Wages	Avg. Annual Wage	Emp.	Total Wages	Avg. Annual Wage
Total, All Industries	103,755	4,534,839,861	43,707	104,117	4,439,827,550	42,643
Total, Private Sector	82,357	3,606,715,381	43,794	82,794	3,523,855,172	42,562
Natural Resources and Mining	2,314	185,248,645	80,056	2,096	169,906,718	81,062
Construction	4,462	251,005,976	56,254	4,464	242,722,580	54,373
Manufacturing	3,321	218,725,885	65,861	3,322	213,875,897	64,382
Trade, Transportation, and Utilities	18,568	712,681,654	38,382	18,870	713,695,029	37,822
42 Wholesale trade	3,333	182,344,595	54,709	3,511	190,760,302	54,332
44-45 Retail trade	11,909	307,326,435	25,806	12,091	308,841,809	25,543
48-49 Transportation and warehousing	2,710	166,349,210	61,383	2,654	158,172,349	59,598
Information	1,670	90,554,895	54,224	1,568	81,227,244	51,803
Financial Activities	5,869	324,177,029	55,235	6,007	314,404,409	52,340
Professional and Business Services	13,154	619,484,584	47,095	13,240	607,750,922	45,903
Education and Health Services	19,491	923,324,172	47,372	19,516	896,833,759	45,954
Leisure and Hospitality	10,067	175,122,842	17,396	10,214	175,314,880	17,164
Other Services	3,441	106,389,699	30,918	3,497	108,123,734	30,919
Government	21,398	928,124,480	43,374	21,323	915,972,378	42,957
Federal Government	2,071	142,652,703	68,881	2,052	139,336,972	67,903
State Government	11,016	486,993,289	44,208	11,031	473,346,997	42,911
Local Government	8,311	298,478,488	35,914	8,240	303,288,409	36,807
Demographics (2010 Census)	Top 10 Employers					
Total Population 2014	190,223	March 2014				
Total Population 2000	199,714	1	Charleston Area Medical Center, Inc.			
Total Population 1990	207,619	2	Kanawha County Board of Education			
Total Population 1980	231,414	3	Herbert J. Thomas Memorial Hospital Association			
Total Population 1970	229,515	4	Wal-Mart Stores, Inc.			
Sex and Age		5	West Virginia Department of Highways			
Male	92,381	6	The Kroger Company			
Female	99,930	7	City of Charleston Municipality			
Ages 14 and below	32,859	8	US Postal Service			
Ages 15 to 19	10,901	9	West Virginia Department of Health and Human Resources			
Ages 20 to 24	10,961	10	West Virginia Department of Administration			
Ages 25 to 34	23,788	Worker Commuting Patterns				
Ages 35 to 44	23,668		Total	Male	Female	
Ages 45 to 54	28,500	Number	85,419	44,128	41,291	
Ages 55 to 64	28,808	Worked in state of residence:	84,514	43,385	41,129	
Ages 65 and older	32,826	Worked in county of residence	76,559	37,602	38,957	
Median Age	42.3	Worked outside county of residence	7,955	5,783	2,172	
Race		Worked outside state of residence	905	743	162	
White	181,169	2010 American Community Survey 5-Year Estimates				
Black or African American	10,407	Income				
American Indian and Alaska Native	9,540	Total Personal Income (000)	2013		\$8,572,301	
Asian	2,684	Per capita Personal Income	2013		\$44,817	
Native Hawaiian and Other Pacific	143	Household Income*				
Some other race	409	Number				
Two or more races	11,209	Less than \$10,000	5,970			
		\$10,000 to \$14,999	5,560			
		\$15,000 to \$24,999	11,063			
		\$25,000 to \$34,999	8,484			
		\$35,000 to \$49,999	13,572			
		\$50,000 to \$74,999	15,413			
		\$75,000 to \$99,999	9,532			
		\$100,000 to \$149,000	7,928			
		\$150,000 or more	5,234			
		Median Household Income (2013)	46,085			
		US Census Bureau				
Source:	http://mi.workforcewv.org					
	http://bls.gov					
	http://census.gov					
	http://bea.gov					

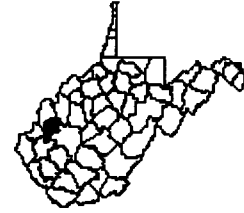
Labor Force Statistics		Kanawha Charleston														
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Civilian Labor Force		97,310	96,760	94,370	91,510	90,930	90,680	91,500	92,040	92,750	92,520	92,600	91,700	91,460	89,550	88,300
Total Employment		92,510	92,350	89,370	86,590	86,590	86,270	87,480	88,360	89,480	86,740	85,770	85,210	85,420	84,260	83,110
Total Unemployment		4,810	4,410	5,000	4,920	4,340	4,410	4,010	3,680	3,260	5,780	6,840	6,490	6,040	5,290	5,190
Unemployment Rate		4.9	4.6	5.3	5.4	4.8	4.9	4.4	4.0	3.5	6.2	7.4	7.1	6.6	5.9	5.9
Total Nonfarm Payroll Employment by Industry		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Total Nonfarm Payroll Employment		117,670	117,930	116,510	115,740	115,700	114,670	115,520	115,710	115,990	114,020	113,120	112,720	112,960	114,120	114,570
Total Private		96,330	96,060	94,250	93,380	93,330	92,110	93,490	93,690	94,060	91,990	91,200	90,870	91,130	91,990	92,330
Goods Producing		14,420	14,270	13,200	12,430	12,410	11,920	12,470	12,240	12,230	11,160	10,620	10,600	10,220	10,180	10,520
Mining and Logging		1,920	2,340	2,250	2,210	2,330	2,530	2,920	3,000	3,140	2,860	**	**	**	**	**
Construction		4,820	4,930	4,850	4,660	4,780	4,730	5,140	5,180	5,210	4,790	4,940	4,810	4,540	4,750	4,830
Manufacturing		7,690	7,000	6,100	5,560	5,300	4,660	4,410	4,070	3,880	3,510	**	**	**	**	**
Service Providing		103,250	103,660	103,310	103,310	103,290	102,740	103,050	103,470	103,760	102,850	102,500	102,120	102,750	103,940	104,050
Private Service Providing		81,910	81,800	81,060	80,950	80,920	80,190	81,020	81,450	81,830	80,830	80,580	80,270	80,910	81,810	81,810
Trade, Transportation and Util		22,830	21,950	21,490	21,110	21,220	21,100	21,230	21,340	20,960	19,960	19,380	19,290	19,250	19,230	18,940
Wholesale Trade		4,450	4,470	4,320	4,170	4,100	4,220	4,420	4,430	4,140	3,940	3,710	3,620	3,540	3,680	3,570
Retail Trade		14,030	13,330	13,180	13,060	13,240	12,940	12,850	12,850	12,640	12,210	12,000	12,050	12,210	12,080	11,900
Transport, Warehousing & Util		4,350	4,150	3,990	3,880	3,880	3,940	3,960	4,060	4,180	3,810	3,670	3,610	3,510	3,470	3,470
Information		3,670	3,580	3,270	3,030	2,880	2,600	2,410	2,370	2,300	2,020	1,790	1,580	1,550	1,580	1,710
Financial Activities		7,300	7,400	7,290	7,600	7,110	6,650	7,190	7,100	7,140	7,080	6,940	6,790	6,950	7,270	7,450
Profess and Business Serv		13,940	13,300	12,790	12,160	12,300	12,240	12,580	12,670	12,820	12,500	13,010	13,270	13,490	13,870	14,150
Education and Health Serv		15,770	16,720	17,280	17,670	18,170	18,260	18,350	18,720	19,240	19,910	20,360	20,360	20,270	20,460	20,330
Leisure and Hospitality		9,600	9,530	9,650	10,170	9,980	10,120	10,140	10,080	10,150	10,190	10,060	10,030	10,240	10,220	10,070
Other Services		8,810	9,320	9,300	9,210	9,260	9,220	9,130	9,170	9,230	9,180	9,050	8,960	9,160	9,190	9,160
Total Government		21,340	21,860	22,250	22,360	22,370	22,550	22,030	22,030	21,930	22,020	21,920	21,850	21,830	22,130	22,240
Federal		2,470	2,400	2,510	2,510	2,430	2,430	2,370	2,460	2,360	2,240	2,070	2,000	2,020	2,050	2,070
State		10,640	11,260	11,440	11,530	11,560	11,670	11,040	10,970	11,070	11,200	11,300	11,220	11,240	11,210	11,200
Local		8,230	8,210	8,300	8,320	8,380	8,450	8,620	8,600	8,500	8,590	8,550	8,630	8,570	8,870	8,980

Benchmark 2014 \*\* not available



## APPENDIX A – General Information (Putnam County)

Sources include: US Census, City-Data.com, WorkforceWV  
www.stats.indiana.edu/



### Overview:

Putnam County is one of about 3,141 counties and county equivalents in the United States. It has 345.7 sq. miles in land area and a population density of 163.9 per square mile. On the most recent census form, 98.9% of the population reported only one race, with 0.9% of these reporting African-American. The population of this county is 0.9% Hispanic (of any race). The average household size is 2.50 persons compared to an average family size of 2.90 persons.

In 2013 construction was the largest of 20 major sectors. It had an average wage per job of \$57,588. Per capita income grew by 20.7% between 2003 and 2013 (adjusted for inflation).

People & Income Overview (By Place of Residence)	Value	Industry Overview (2013) (By Place of Work)	Value
Population (2013)	56,650	Covered Employment	19,822
Growth (%) since 2010	2.1%	Avg wage per job	\$45,050
Census			
Households (2013)	21,391	Manufacturing - % all jobs in County	11.0%
Labor Force (persons) (2013)	26,898	Avg wage per job	\$62,169
Unemployment Rate (2013)	5.3%	Transportation & Warehousing - % all jobs in County	5.9%
Per Capita Personal Income (2013)	\$42,903	Avg wage per job	\$44,610
Median Household Income (2013)	\$56,102	Health Care, Social Assist. - % all jobs in County	8.9%
Poverty Rate (2013)	11.0	Avg wage per job	\$39,153
H.S. Diploma or More - % of Adults 25+ (2013 ACS 5yr)	89.3	Finance and Insurance - % all jobs in County	2.6%
Bachelor's Deg. or More - % of Adults 25+ (2013 ACS 5yr)	24.0	Avg wage per job	\$51,800

### US Census Bureau – Putnam County, WV

People QuickFacts	Putnam County	West Virginia
Population, 2014 estimate	NA	1,850,326
Population, 2013 estimate	56,650	1,853,595
Population, 2010 (April 1) estimates base	55,486	1,853,033
Population, percent change - April 1, 2010 to July 1, 2014	NA	-0.1%
Population, percent change - April 1, 2010 to July 1, 2013	2.1%	Z
Population, 2010	55,486	1,852,994
Persons under 5 years, percent, 2013	5.7%	5.5%
Persons under 18 years, percent, 2013	23.3%	20.6%
Persons 65 years and over, percent, 2013	15.8%	17.3%
Female persons, percent, 2013	50.8%	50.6%

**US Census Bureau – continued**

White alone, percent, 2013 (a)	96.7%	93.8%
Black or African American alone, percent, 2013 (a)	1.1%	3.6%
American Indian and Alaska Native alone, percent, 2013 (a)	0.2%	0.2%
Asian alone, percent, 2013 (a)	0.9%	0.8%
Native Hawaiian and Other Pacific Islander alone, percent, 2013 (a)	Z	Z
Two or More Races, percent, 2013	1.1%	1.5%
Hispanic or Latino, percent, 2013 (b)	1.0%	1.4%
White alone, not Hispanic or Latino, percent, 2013	95.8%	92.7%
Living in same house 1 year & over, percent, 2009-2013	93.9%	88.1%
Foreign born persons, percent, 2009-2013	1.3%	1.4%
Language other than English spoken at home, pct age 5+, 2009-2013	1.8%	2.4%
High school graduate or higher, percent of persons age 25+, 2009-2013	89.3%	83.9%
Bachelor's degree or higher, percent of persons age 25+, 2009-2013	24.0%	18.3%
Veterans, 2009-2013	4,780	159,448
Mean travel time to work (minutes), workers age 16+, 2009-2013	25.5	25.5
Housing units, 2013	23,575	879,449
Homeownership rate, 2009-2013	84.7%	73.4%
Housing units in multi-unit structures, percent, 2009-2013	7.5%	12.0%
Median value of owner-occupied housing units, 2009-2013	\$142,900	\$98,500
Households, 2009-2013	21,391	741,390
Persons per household, 2009-2013	2.61	2.43
Per capita money income in past 12 months (2013 dollars), 2009-2013	\$27,957	\$22,966
Median household income, 2009-2013	\$54,854	\$41,043
Persons below poverty level, percent, 2009-2013	11.3%	17.9%

<b>Business QuickFacts</b>	<b>Putnam County</b>	<b>West Virginia</b>
Private nonfarm establishments, 2012	1,218	37,906 <sup>1</sup>
Private nonfarm employment, 2012	16,583	579,583 <sup>1</sup>
Private nonfarm employment, percent change, 2011-2012	5.3%	2.0% <sup>1</sup>
Nonemployer establishments, 2012	2,939	89,213
Total number of firms, 2007	3,475	120,381
Black-owned firms, percent, 2007	F	S
American Indian- and Alaska Native-owned firms, %, 2007	F	S
Asian-owned firms, percent, 2007	1.4%	1.3%
Native Hawaiian and Other Pacific Islander-owned firms, percent, 2007	F	0.0%

Hispanic-owned firms, percent, 2007	F	0.7%
Women-owned firms, percent, 2007	26.9%	28.1%

Manufacturers shipments, 2007 (\$1000)	D	25,080,573
Merchant wholesaler sales, 2007 (\$1000)	541,706	11,036,467
Retail sales, 2007 (\$1000)	589,769	20,538,829
Retail sales per capita, 2007	\$10,725	\$11,340
Accommodation and food services sales, 2007 (\$1000)	61,640	2,553,258
Building permits, 2013	135	2,575

**Geography QuickFacts**

	<b>Putnam County</b>	<b>West Virginia</b>
Land area in square miles, 2010	345.67	24,038.21
Persons per square mile, 2010	160.5	77.1
FIPS Code	079	54
Metropolitan or Micropolitan Statistical Area	Huntington- Ashland, WV-KY-OH Metro Area	

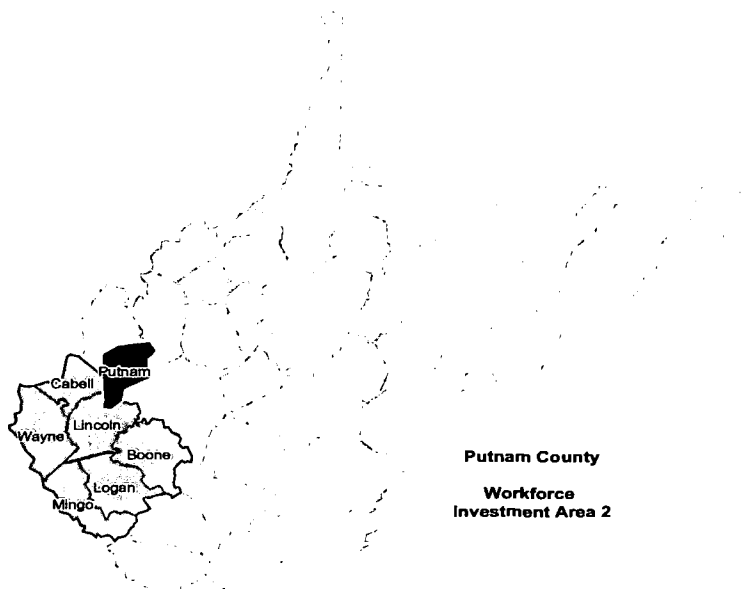
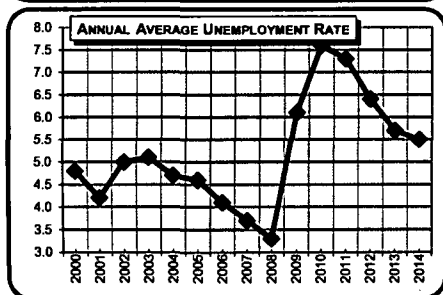
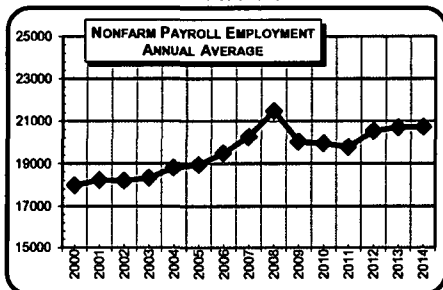
1: Includes data not distributed by county

## Putnam County

	2014			2013		
	Emp.	Total Wages	Avg. Annual Wage	Emp.	Total Wages	Avg. Annual Wage
Total, All Industries	19,893	911,469,488	45,819	19,860	890,657,255	44,847
Total, Private Sector	17,631	814,783,782	46,213	17,630	796,921,903	45,203
Natural Resources and Mining	109	4,198,882	38,522	118	4,907,365	41,588
Construction	2,263	132,047,151	58,350	2,440	140,348,557	57,520
Manufacturing	2,220	140,338,961	63,216	2,168	134,476,844	62,028
Trade, Transportation, and Utilities	5,445	251,896,754	46,262	5,497	240,635,622	43,776
42 Wholesale trade	1,599	89,395,993	55,907	1,619	88,827,843	54,866
44-45 Retail trade	2,309	63,717,788	27,595	2,267	59,434,676	26,217
48-49 Transportation and warehousing	967	49,605,903	51,299	1,024	46,123,580	45,043
Information	218	11,947,696	54,806	216	11,515,352	53,312
Financial Activities	887	45,225,675	50,987	814	40,147,323	49,321
Professional and Business Services	2,183	111,830,953	51,228	2,118	111,578,071	52,681
Education and Health Services	1,829	74,047,566	40,485	1,800	70,177,186	38,987
Leisure and Hospitality	1,912	26,085,216	13,643	1,872	25,181,942	13,452
Other Services	565	17,164,928	30,380	587	17,953,641	30,585
Government	2,262	96,685,706	42,743	2,230	93,735,352	42,034
Federal Government	194	10,706,907	55,190	174	9,466,537	54,405
State Government	287	9,917,348	34,555	271	9,231,303	34,064
Local Government	1,781	76,061,451	42,707	1,785	75,037,512	42,038
<b>Demographics (2010 Census)</b>	<b>Top 10 Employers</b>					
Total Population 2014	56,770	<b>March 2014</b>				
Total Population 2000	51,734	1	Putnam County Board of Education			
Total Population 1990	42,835	2	Toyota Motor Manufacturing, West Virginia, Inc.			
Total Population 1980	38,181	3	Charleston Area Medical Center, Inc.			
Total Population 1970	27,626	4	Diamond Electric Manufacturing Corporation			
<b>Sex and Age</b>		5	Appalachian Power Company			
Male	27,466	6	Rite Aid of West Virginia, Inc.			
Female	28,567	7	Wal-Mart Stores, Inc.			
Ages 14 and below	10,861	8	Work Force, Inc.			
Ages 15 to 19	3,365	9	Brand Energy Services LLC			
Ages 20 to 24	2,570	10	American Electric Power Service Corporation			
Ages 25 to 34	6,451	<b>Worker Commuting Patterns</b>				
Ages 35 to 44	7,839		<i>Total</i>	<i>Male</i>	<i>Female</i>	
Ages 45 to 54	8,500	Number	29,582	15,867	13,715	
Ages 55 to 64	8,019	Worked in state of residence:	29,077	15,503	13,574	
Ages 65 and older	8,428	Worked in county of residence	24,477	12,215	12,262	
Median Age	42	Worked outside county of residence	4,600	3,288	1,312	
<b>Race</b>		Worked outside state of residence	505	364	141	
White	54,870	<i>2010 American Community Survey 5-Year Estimates</i>				
Black or African American	841	<b>Income</b>				
American Indian and Alaska Native	322	Total Personal Income	2013		2,430,440	
Asian	537	Per capita Personal Income	2013		\$42,903	
Native Hawaiian and Other Pacific	0	<b>Household Income*</b>		<i>Number</i>		
Some other race	153	Less than \$10,000			\$1,379	
Two or more races	690	\$10,000 to \$14,999			\$855	
<b>Data Sources</b>		\$15,000 to \$24,999			\$2,128	
<a href="http://lmi.workforcewv.org">http://lmi.workforcewv.org</a>		\$25,000 to \$34,999			\$2,399	
		\$35,000 to \$49,999			\$2,959	
<a href="http://bls.gov">http://bls.gov</a>		\$50,000 to \$74,999			\$3,939	
		\$75,000 to \$99,999			\$3,044	
<a href="http://census.gov">http://census.gov</a>		\$100,000 to \$149,000			\$2,883	
		\$150,000 or more			\$1,805	
<a href="http://bea.gov">http://bea.gov</a>		Median Household Income (2013)			\$54,854	
		*US Census Bureau				

County:		Putnam													
County Seat:		Winfield													
Labor Force Statistics	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Civilian Labor Force	26,220	26,240	26,110	25,740	26,080	26,470	27,140	27,470	27,980	27,920	26,390	26,300	26,400	26,000	25,810
Total Employment	24,960	25,150	24,820	24,440	24,870	25,260	26,020	26,450	27,060	26,230	24,390	24,380	24,710	24,530	24,390
Total Unemployment	1,260	1,100	1,300	1,300	1,220	1,210	1,120	1,020	920	1,690	2,000	1,920	1,690	1,470	1,430
Unemployment Rate	4.8	4.2	5.0	5.1	4.7	4.6	4.1	3.7	3.3	6.1	7.6	7.3	6.4	5.7	5.5
<b>Total Nonfarm Payroll Employment by Industry</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Total Nonfarm Payroll Employment	17,970	18,230	18,190	18,320	18,800	18,950	19,490	20,260	21,470	20,030	19,950	19,780	20,530	20,700	20,720
Total Private	15,650	15,900	15,770	15,900	16,410	16,600	17,040	17,850	19,050	17,510	17,380	17,240	17,950	18,280	18,270
Goods Producing	4,290	4,370	4,320	4,220	4,680	4,630	4,850	5,180	5,530	4,480	4,330	4,100	4,490	4,870	4,810
Mining and Logging	60	40	70	30	30	40	60	80	100	90	**	**	**	**	**
Construction	2,090	2,080	1,900	2,090	2,670	2,690	2,810	2,980	3,260	2,340	2,340	2,050	2,320	2,630	2,530
Manufacturing	2,150	2,260	2,360	2,110	1,980	1,900	1,990	2,130	2,180	2,050	**	**	**	**	**
Service Providing	13,680	13,860	13,870	14,100	14,120	14,320	14,640	15,080	15,940	15,560	15,620	15,680	16,040	15,830	15,920
Private Service Providing	11,360	11,530	11,440	11,680	11,730	11,970	12,180	12,670	13,510	13,030	13,050	13,140	13,460	13,410	13,470
Trade, Transportation and Util	5,440	5,360	5,250	5,400	5,370	5,410	5,270	5,340	5,660	5,420	5,260	5,350	5,590	5,670	5,720
Wholesale Trade	1,440	1,480	1,500	1,590	1,670	1,670	1,580	1,520	1,630	1,600	1,520	1,570	1,670	1,690	1,700
Retail Trade	2,040	1,960	1,890	1,930	1,890	1,970	1,990	2,070	2,260	2,200	2,190	2,200	2,250	2,270	2,310
Transport, Warehousing & Util	1,960	1,920	1,860	1,880	1,810	1,770	1,710	1,760	1,770	1,610	1,540	1,580	1,660	1,710	1,710
Information	210	210	250	250	200	260	320	370	370	340	**	**	**	**	**
Financial Activities	750	710	680	680	760	830	840	860	970	920	1,120	880	810	870	930
Profess and Business Serv	1,260	1,370	1,400	1,350	1,240	1,220	1,440	1,730	1,930	1,630	1,630	1,800	1,940	2,290	2,400
Education and Health Serv	1,140	1,260	1,230	1,340	1,410	1,430	1,440	1,500	1,650	1,820	1,770	1,820	1,820	1,830	1,850
Leisure and Hospitality	1,490	1,520	1,490	1,470	1,550	1,600	1,650	1,680	1,720	1,690	1,710	1,760	1,820	1,870	1,900
Other Services	1,060	1,100	1,150	1,180	1,190	1,210	1,220	1,190	1,220	1,210	1,180	1,210	1,240	670	460
Total Government	2,320	2,330	2,420	2,420	2,390	2,350	2,450	2,410	2,420	2,530	2,570	2,540	2,580	2,420	2,450
Federal	170	150	150	140	130	140	180	190	190	240	240	180	180	170	190
State	330	330	340	360	330	210	230	230	210	190	190	220	260	270	290
Local	1,820	1,850	1,930	1,930	1,940	2,000	2,050	2,000	2,030	2,100	2,140	2,140	2,140	1,970	1,970

Benchmark 2013 \*\* not available



## APPENDIX B

### THE SYSTEM AND THE UTILITY BOARD

The City's wastewater operation is named the "Nitro Regional Wastewater Utility". The Utility has operated a sewerage collection and treatment system since 1959.

*System Overview (PSC Annual Reports)*

<u>Fiscal Year (June 30)</u>	<u>Gross Annual Revenues</u>	<u>Gross Plant in Service</u>	<u>Number of Active Customers</u>
2010	\$1,830,487	\$19,046,101	4,213
2011	\$1,881,046	\$20,723,979	4,211
2012	\$1,904,357	\$21,558,748	4,282
2013	\$1,910,386	\$21,677,959	4,170
2014	\$2,049,728	\$21,969,770	4,478
2015	\$2,144,525	\$22,419,703	4,502

The City owns, operates and maintains a wastewater treatment and collection system, extending throughout the City consisting of 1 treatment plant, 24 pumping stations and 305,000 feet of wastewater mains. The primary treatment plant has a capacity of 1.875 MGD. The plant discharges its treated effluent to the Kanawha River.

*Customers Served*

According to the PSC Annual Report, as of June 30, 2015, the Utility provides service to approximately 4,502 customers.

	<u>Customers At Year End</u>
Residential	4,236
Commercial	241
Industrial	7
Public Authority	17
Resale	<u>1</u>
	4,502

*Sewer Service Area*

The system area includes approximately 9,000 people in the City of Nitro, the communities of Rock Branch and Poca River as well as the Putnam Public Service District. The service area is located in both Kanawha and Putnam Counties.

**Mayor/Council**

The City is governed by an elected Mayor and Council. The Mayor and Council members, terms and occupations are listed below:

<u>Mayor/Council</u>	<u>Term</u>	<u>Occupation</u>
Dave Casebolt, Mayor	7/01/12 to 6/30/16	Real Estate Agent
Rita Cox, Recorder	7/01/12 to 6/30/16	Business Owner
John Young, Treasurer	Appointed	Business Owner, CPA
John Montgomery, Council at Large	2/19/13 to 6/30/16	Attorney
Brenda Tyler, Council at Large	7/01/12 to 6/30/16	Retired



Bill Javins, Council at Large	7/01/12 to 6/30/16	Real Estate Agent
Al Walls, Council Ward 1	7/01/12 to 6/30/16	Retired
Bill Racer, Council Ward 2	7/01/12 to 6/30/16	Retired
Laurie Elkins, Council Ward 3	7/01/12 to 6/30/16	Nurse Anesthetist
Andy Shamblin, Council Ward 4	7/01/12 to 6/30/16	School Teacher

The City generally employs 82 full-time employees.

### Utility Board

Pursuant to the Act and the Board Ordinance, the Utility is operated by a Utility Board appointed by the Council. Utility Board members include Dave Casebolt, Chairman, Rich Hively, Kim Painter, Harry Miller and Steve Boggs, P.E. The Utility employs 11 full-time employees.

### Past Projects

The City is committed to continued improvements in the operation of the wastewater system. The most recently completed improvement was a 2012 project for approximately \$3,000,000 consisting of:

1. New head works at the treatment plant
2. New garage/maintenance facility at treatment plant
3. Replaced pump station # 7
4. New master flowmeter at plant
5. Telemetry for 2 pump stations
6. Secondary tanks sand blasted and painted at plant
7. Security cameras installed at plant
8. New collector maintenance truck

### Customer Statistics

The average number of customers for the past five Fiscal Years:

<u>Fiscal Year</u> <u>ending June 30</u>	<u>Sewer</u> <u>Customers</u>
2011	4,211
2012	4,282
2013	4,170
2014	4,478
2015	4,502

In addition to its residential and commercial customers, the City treats the wastewater from the Putnam Public Service District (located in Putnam County directly across the Kanawha River from the City). Under an agreement with the Putnam PSD, the Utility has reserved a capacity of 250,000 gallons/day of the Utility's 1.875 MGD capacity.

The following table sets forth the ten largest customers of the Utility for the fiscal year ended June 30, 2015.

- 
1. Putnam PSD
  2. Better Foods
  3. Cross Road Village Apartments
  4. Putnam Co. Board of Education
  5. Pilot Travel Center
  6. Poca River Hunt and Fish Club
  7. Village on Park
  8. John Cox (private)

- 9. Kingsway Christian Church
- 10. Rio Grande

***Current Sewer Rates***

CITY OF NITRO, a municipal corporation OF NITRO, WEST VIRGINIA  
**RATES, RULES AND REGULATIONS FOR FURNISHING  
 SEWERAGE AND SEWAGE DISPOSAL SERVICE**  
 at Nitro and vicinity, Kanawha and Putnam Counties  
 Filed with THE PUBLIC SERVICE COMMISSION of WEST VIRGINIA

Issued January 22, 2014  
 Effective for service rendered on and after January 3, 2014 or as otherwise provided herein  
 Adopted by City Council on November 19, 2013.  
 Issued by CITY OF NITRO, a municipal corporation

**RULES AND REGULATIONS**

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

**APPLICABILITY**

Applicable inside and outside the corporate limits of the City of Nitro

**AVAILABILITY OF SERVICE**

Available for sanitary sewer service

**PHASE I - RATES EFFECTIVE ON AND AFTER FEBRUARY 1, 2013 THROUGH FEBRUARY 1, 2014**

**RATE**

First	2,000 gallons	used per month	\$10.31	per 1,000 gallons
Next	3,000 gallons	used per month	\$ 8.65	per 1,000 gallons
Next	25,000 gallons	used per month	\$ 6.72	per 1,000 gallons
All Over	30,000 gallons	used per month	\$ 6.04	per 1,000 gallons

**MINIMUM RATE**

\$20.63 based upon 2,000 gallons

**AVERAGE BILL:**

4,000 gallons \$37.93

**RESIDENTIAL FLAT RATE**

Each un-metered residential customer shall be charged a flat rate of \$39.49 per month.

**PHASE II - RATES EFFECTIVE ON AND AFTER FEBRUARY 2, 2014**

**RATE**

First	2,000 gallons	used per month	\$11.04	per 1,000 gallons
Next	3,000 gallons	used per month	\$ 9.26	per 1,000 gallons
Next	25,000 gallons	used per month	\$ 7.19	per 1,000 gallons
All Over	30,000 gallons	used per month	\$ 6.47	per 1,000 gallons

MINIMUM RATE

\$22.07 based upon 2,000 gallons

AVERAGE BILL:

4,000 gallons \$40.59

RESIDENTIAL FLAT RATE

Each un-metered residential customer shall be charged a flat rate of \$42.26 per month.

SECURITY DEPOSIT

\$70.00\*

\*A security deposit shall be collected from all new applicants for service to secure the payment of service rates, fees and charges in the event they become delinquent. 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 until another deposit is collected. After twelve months of prompt payment history, a customer's deposit shall either be returned to the customer or credited to the customer's account, in either case with interest at such rate as may be prescribed by the Public Service Commission: Provided, that where the customer is a tenant, the deposit need not be returned until the customer discontinues service.

SERVICE CONNECTION INSPECTION FEE

\$25.00

SERVICE CONNECTION (TAP) FEE

\$400.00

DELAYED PAYMENT PENALTY

The above schedule is net. Any bill not paid in full within twenty (20) days, ten percent (10%) will be added to the net amount thereof. This delayed payment penalty is not interest and is only to be collected once for each bill where appropriate.

DISCONNECT FEE

\$20.00

The above disconnect fee is applicable when the Nitro Regional Waste Water Utility requests that a customer's water service be disconnected for non-payment of the sewer bill, whether or not such service is actually disconnected.

RECONNECT FEE

\$20.00

The above reconnect fee is applicable when a customer's water service is disconnected for nonpayment of the sewer bill, and such service is thereafter reconnected.

INTEREST

In the event any bill is not paid within 30 days, interest on the amount of such bill will be charged at the rate of ten per cent (10%) per annum.

### RETURN CHECK CHARGE

In the event any check, draft or order given in payment for a sanitary sewer bill is dishonored because of insufficient funds, a service charge of \$25.00 shall be imposed.

### SURCHARGE FOR SURFACE AND STORM WATER RUNOFF DISCHARGING INTO THE CITY OF NITRO COMBINED SEWER SYSTEM:

The charge for roof drains, downspouts, storm sewers, catch basins or similar facilities discharging surface and storm water runoff or other precipitation into the combined sewer system of the City of Nitro will be calculated on a basis of the following formula and will not be cumulative upon any metered rate for sewer service charges:

$$S = A \times P \times .6233 \times C$$

S - The surcharge in Dollars

A - The Average Area Under Roof and the Area of Such Other Water Precipitation Collecting Surfaces Connected to the Combined Sewer System ("Water Collecting Area") in Square Feet.

P - The Measured Monthly Precipitation in Inches (as measured by the National Weather Service or other best available source of precipitation data).

.6233 - A conversion factor to convert A x P to thousand gallons.

C - The Applicable Rate Per Thousand Gallons of Metered Water Usage

The surcharge shall not apply to:

(a) Any owner, tenant, or occupant of each and every dwelling, structure or other improvement to property the construction of which is substantially completed on or before the effective date of the ordinance first enacting this exemption to the Surcharge ("existing Structures/Improvements");

(b) Any owner, tenant, or occupant of each and every dwelling, structure or other improvement to property (other than Replacement Structures/Improvements): (i) the construction of which is substantially completed after the effective date of the ordinance first enacting this exemption to the Surcharge ("New Structures/Improvements"); and (ii) for which the Water Collecting Area is 1,200 square feet or less; and

(c) Any owner, tenant, or occupant of each and every dwelling, structure or other improvement to property: (i) the construction of which is substantially completed after the effective date of the ordinance first enacting this exemption to the Surcharge; (ii) that was constructed to replace my Existing Structures/Improvements that were moved off the property, torn down or otherwise destroyed ("Replacement Structures/Improvements"); and (iii) which has a total Water Collecting Area that is not more than 1,200 square feet greater than the Water Collecting Area of the Existing Structure/Improvements being replaced.

Any owner, tenant, or occupant of New Structures/Improvements with a Water Collecting Area that exceeds 1,200 square feet, and any owner, tenant, or occupant of Replacement Structures/Improvements with a Water Collecting Area that is more than 1,200 square feet greater than the Water Collecting Area of the Existing Structures/Improvements being replaced, shall be subject to the Surcharge on only the square footage of the Water Collecting Areas that exceeds the respective applicable square footage exemptions set forth in paragraphs (b) and (c) above.

### POCA RIVER SERVICE AREA

On and after June, 2001, being the date on which sanitary sewerage service was available to the residents of the Poca River Service Area, the rates and charges for the use of, and services rendered to, such customers by the sanitary sewer system of the Nitro Regional Waste Water Utility shall be equal to the regularly enacted rates and charges for all other users of the system, plus a surcharge in the amount of \$13.69 per month.

The above surcharge shall be applicable for any owner, tenant, or occupant of each and every lot or parcel of land or building situated within Poca River Service Area and having any connection to the sanitary sewer system of the Nitro Regional Waste Water Utility.

**DISCHARGE/HAULER RATES**

On and after February 1, 2013, each hauler shall pay the charge as applicable below:

**NON-DOMESTIC/PRETREATED RATES:**

0	through 2000 gallons	\$ 75.00	per load
2001	through 4000 gallons	\$150.00	per load
4001	through 6000 gallons	\$250.00	per load
6001	through 8000 gallons	\$350.00	per load
All Over	8000 gallons	\$600.00	per load

**SEPTIC/PACKAGE PLANT RATES:**

0	through 2000 gallons	\$ 50.00	per load
2001	through 4000 gallons	\$100.00	per load
4001	through 6000 gallons	\$200.00	per load
6001	through 8000 gallons	\$300.00	per load
All Over	8000 gallons	\$500.00	per load

All haulers discharging non-domestic/pretreated/septic/package plant wastewater must go through a permit modification process before the City will accept batch discharges. A surcharge may apply when characteristics of the wastewater exceed allowable limits.

**System Budget and Expenditures**

An operating budget is prepared annually by the Utility Board and is approved by the Council.

**Method of Accounting**

The accounts of the Water and Sewer Funds are organized on the basis of fund accounting as enterprise funds. With respect to operating revenues and expenses, the City accounts are maintained in accordance with generally accepted accounting principles. The West Virginia State Auditor’s office audited the records of the City for the fiscal year ended June 30, 2014. (See “APPENDIX C – FINANCIAL STATEMENTS OF THE CITY OF NITRO.”)

**Retirement System Contributions (source: City Audits)**

Fiscal Years Ended June 30	2011	2012	2013	2014
<i>WV Retiree Health Benefits Trust Fund</i>				
Annual OPEB Cost	\$520,373	\$631,698	\$240,309	\$250,451
Percentage Contributed	23%	30%	87%	87%
<i>Public Employees’ Retirement System (PERS)</i>				
Annual Pension Cost	\$97,911	\$130,093	\$113,256	\$114,017
Percentage Contributed	100%	100%	100%	100%

**APPENDIX C**  
**FINANCIAL STATEMENTS OF THE CITY OF NITRO**

December 3, 2015

City of Nitro  
Nitro, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Crews & Associates, Inc.  
Charleston, West Virginia

Re: City of Nitro (West Virginia) Sewerage System Bond Anticipation Notes,  
Series 2015

Ladies and Gentlemen:

We have served as bond counsel to the City of Nitro, West Virginia (the "Issuer") in connection with the issuance of its Sewerage System Bond Anticipation Notes, Series 2015, dated the date hereof.

We have examined a record of proceedings relating to the issuance by the Issuer of its \$\_\_\_\_\_ aggregate principal amount of Sewerage System Bond Anticipation Notes, Series 2015 (the "Notes").

The Notes 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 of the West Virginia Code of 1931, as amended (the "Act"), and a Bond and Note Ordinance duly passed by the Issuer on October 20, 2015, effective November 17, 2015, as supplemented by a Supplemental Parameters Resolution duly adopted by the Issuer on November 17, 2015 and a Certificate of Determinations executed by the Mayor on November \_\_, 2015 (collectively, the "Ordinance"), and are subject to all the terms and conditions of the Ordinance. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Ordinance when used herein.

The Notes are issued in fully registered form, are dated December 3, 2015, upon original issuance, mature on January 1 in the years and amounts and bear interest payable each January 1 and July 1, commencing July 1, 2016 all as set forth in the Ordinance.

The Ordinance provides that the Notes are issued for the purpose of (i) paying the costs of acquisition and construction of certain additions, betterments and improvements to the System; and (ii) paying the costs of issuance of the Notes.

The Notes have been sold to Crews & Associates, Inc. (the “Original Purchaser”), pursuant to a Notes Purchase Agreement dated November \_\_, 2015, and accepted by the Issuer (the “Notes Purchase Agreement”).

As to questions of fact material to our opinion, we have relied upon representations of the Issuer, the Original Purchaser and other entities contained in the Ordinance, the Notes Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate and in the certified proceedings and other certifications of certain officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, and assuming compliance with the covenants and representations of the Issuer and others set forth in the Ordinance, the Notes Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate and such certifications, we are of the opinion, under existing law, that:

1. The Issuer is a duly organized and validly existing municipal corporation under and pursuant to the laws of the State of West Virginia, with full power and authority to adopt and enact the Ordinance, enter into the Notes Purchase Agreement, the Continuing Disclosure Agreement and the Tax Certificate, perform its obligations under the terms and provisions thereof and to issue and sell the Notes, all under the provisions of the Act and other applicable provisions of law.

2. The Issuer, through its governing body, has legally and effectively adopted and enacted the Ordinance, has authorized, executed and delivered the Notes Purchase Agreement, the Continuing Disclosure Agreement, and the Tax Certificate, has authorized the distribution of the Official Statement in connection with the marketing and sale of the Notes, and has issued and delivered the Notes to the Original Purchaser pursuant to the Notes Purchase Agreement. The Ordinance is in full force and effect as of the date hereof.

3. Assuming due authorization, execution and delivery by the other parties thereto, the Bond Purchase Agreement, the Continuing Disclosure Agreement and the Tax Certificate constitute valid, legal, binding and enforceable instruments of the Issuer in accordance with their respective terms.

4. The Notes have been duly authorized, executed and delivered by the Issuer and, assuming proper authentication, constitute valid and legally enforceable limited obligations of the Issuer, payable from, and secured by a lien on, the proceeds of future bonds to be issued by the Issuer. The interest on the Notes is payable from and secured by the Surplus Revenues of the System. The Notes are junior and subordinate to the Issuer’s: (i) Sewer Revenue Bonds (West Virginia Water Development Authority), Series 1996 A, dated December 10, 1996, issued in the original aggregate principal amount of \$4,575,502 (the “Series 1996 A Bonds”); (ii) Sewer Revenue Bonds (West Virginia Water Development Authority), Series 2000 A, dated June 28, 2000, issued in the original aggregate principal amount of \$2,050,000 (the “Series 2000 A



Bonds”); (iii) Sewer System Revenue Bonds, Series 2001 A (West Virginia SRF Program), dated June 5, 2001, issued in the original aggregate principal amount of \$543,800 (the “Series 2001 A Bonds”); (iv) Sewer Revenue Bonds (West Virginia SRF Program), Series 2009 A, dated November 12, 2009, issued in the original aggregate principal amount of \$1,910,778 (the “Series 2009 A Bonds”); and (v) Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program), to be issued simultaneously with the Notes, in the original aggregate principal amount of \$679,519 (the “Series 2015 A Bonds”) (collectively, the “Prior Bonds”). The Notes are enforceable in accordance with their terms and the terms of the Ordinance, and are entitled to the benefits of the Ordinance and the Act.

5. Under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Notes (including any original issue discount properly allocable to owners of the Notes) is excludable from gross income of the holders thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”) and is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. Ownership of tax-exempt obligations, including the Notes, may result in collateral federal income tax consequences to certain taxpayers, including without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations.

The Issuer has designated the Notes as “Qualified Tax-Exempt Obligations” for purposes of paragraph (3) of Section 265(b) of the Code and covenanted that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income taxes (excluding, however, obligations described in Section 265(b)(3)(C)(ii) of the Code), including the Notes, have been or shall be issued by the Issuer or any entities subordinate to it, during the calendar year 2015, all as determined in accordance with the Code. We offer no opinion as to such collateral tax consequences or any other federal tax consequences arising with respect to the Notes. Prospective purchasers of the Notes should consult their own tax advisors as to such consequences.

The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code that must be satisfied subsequent to issuance of the Notes for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and with all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Notes set forth in the Ordinance, Notes Purchase Agreement, the Tax Certificate and the certifications of the Issuer and others. Failure to comply with such Code provisions or such certifications, covenants and representations could cause the interest on the Notes to be includable in gross income retroactive to the date of issuance of the Notes.

6. Under the Act, the Notes and the interest thereon are exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

7. The Notes are exempted securities within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended, and the West Virginia Uniform Securities Act, as amended, and it is not necessary, in connection with the public offering and sale of the Notes, to register any securities under said Securities Acts.

It is to be understood that the rights of the holders of the Notes and the enforceability of the Notes, the Ordinance, the Notes Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate, and the liens, pledges, rights or remedies with respect thereto, are subject to and may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws heretofore or hereafter enacted affecting creditors' rights or remedies generally and that their enforcement may also be subject to the application of public policy, general principles of equity and the exercise of judicial discretion in appropriate cases.

We do not express any opinion as to the sufficiency or accuracy of the material, information or financial statements which are set forth in the official statement prepared and used in connection with the offering and sale of the Notes.

We have examined the executed and authenticated Notes of said issue, and in our opinion, said Notes are in proper form and have been duly executed and authenticated.

Very truly yours,

**APPENDIX F**

**FORM OF ORDINANCE AND NOTES SUPPLEMENTAL RESOLUTION**

CITY OF NITRO  
WEST VIRGINIA

SEWERAGE SYSTEM  
BOND AND NOTE ORDINANCE

CITY OF NITRO  
SEWERAGE SYSTEM  
BOND AND NOTE ORDINANCE

TABLE OF CONTENTS

	<u>PAGE</u>
<b>ARTICLE I</b>	
<b>STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS</b>	
Section 1.01. Authority of this Ordinance .....	1
Section 1.02. Findings.....	1
Section 1.03. Ordinance Constitutes Contract .....	4
Section 1.04. Definitions.....	5
<b>ARTICLE II</b>	
<b>AUTHORIZATION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO SYSTEM; AUTHORIZATION OF THE NOTES</b>	
Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements.....	10
Section 2.02. Authorization of the Notes.....	10
Section 2.03. Security for the Notes .....	10
Section 2.04. Designation of Notes as “Qualified Tax-Exempt Obligations.” .....	10
<b>ARTICLE III</b>	
<b>AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS</b>	
Section 3.01. Authorization and Terms of Bonds.....	11
Section 3.02. Execution of Bonds.....	11
Section 3.03. Authentication and Registration .....	12
Section 3.04. Negotiability, Transfer and Registration.....	12
Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost.....	12
Section 3.06. Bonds not to be Indebtedness of the City .....	13
Section 3.07. Bonds Secured by Pledge of Net Revenues .....	13
Section 3.08. Form of Bonds .....	13
Section 3.09. Sale of Bonds .....	13
Section 3.10. Bonds are Issued as Parity Bonds .....	13
Section 3.11. Delivery of Bonds .....	14

ARTICLE IV  
APPLICATION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01.	Application of Bond Proceeds .....	15
Section 4.02.	Disbursements From the Bond Construction Trust Fund .....	15
Section 4.03.	Funds and Accounts; Flow of Funds .....	16
Section 4.04.	Investments .....	17

ARTICLE V  
DEFAULT AND REMEDIES

Section 5.01.	Events of Default .....	18
Section 5.02.	Remedies.....	18
Section 5.03.	Appointment of Receiver.....	18

ARTICLE VI  
ADDITIONAL COVENANTS OF THE CITY

Section 6.01.	Completion of Project; Permits and Orders .....	20
Section 6.02.	Insurance and Construction Bonds .....	20
Section 6.03.	Issuance of Other Obligations Payable Out of Revenues .....	21
Section 6.04.	Engineering Services and Operating Personnel .....	21
Section 6.05.	Compliance With Law .....	21
Section 6.06.	Books; Records and Audit .....	21
Section 6.07.	Operating Budget.....	23
Section 6.08.	Tax Covenants .....	23
Section 6.09.	Rebate Covenant .....	23
Section 6.10.	Arbitrage .....	24
Section 6.11.	Tax Certificate and Rebate.....	24
Section 6.12.	Securities Laws Compliance.....	25
Section 6.13.	Defeasance of Bonds.....	25
Section 6.14.	Rates and Charges .....	26
Section 6.15.	Contracts .....	27

ARTICLE VII  
REGISTRAR

Section 7.01.	Appointment of Registrar .....	28
Section 7.02.	Responsibilities of Registrar .....	28
Section 7.03.	Evidence on Which Registrar May Act .....	28
Section 7.04.	Compensation and Expenses.....	28
Section 7.05.	Certain Permitted Acts.....	28
Section 7.06.	Resignation of Registrar .....	28
Section 7.07.	Removal .....	29
Section 7.08.	Appointment of Successor .....	29
Section 7.09.	Transfer of Rights and Property to Successor.....	29
Section 7.10.	Merger or Consolidation .....	29

Section 7.11. Adoption of Authentication .....30

ARTICLE VIII  
MISCELLANEOUS

Section 8.01. Modification or Amendment.....31  
Section 8.02. Severability of Invalid Provisions.....31  
Section 8.03. Repeal of Conflicting Ordinances.....31  
Section 8.04. Covenant of Due Procedure .....31  
Section 8.05. Statutory Notice and Public Hearing .....31  
Section 8.06. Effective Date .....32

CERTIFICATE OF TRUTH AND ACCURACY .....33

EXHIBIT A DESCRIPTION OF PROJECT ..... A-1  
EXHIBIT B FORM OF BOND AND FORM OF NOTE .....B-1  
EXHIBIT C NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND  
ORDINANCE .....C-1

**ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING SEWERAGE SYSTEM OF THE CITY OF NITRO; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$10,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, FROM TIME TO TIME IN ONE OR MORE SERIES AS DESIGNATED IN SUPPLEMENTAL RESOLUTIONS, OF THE CITY OF NITRO, THE PROCEEDS OF WHICH, SHALL BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF NITRO WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO PERMANENTLY FINANCE THE COST OF SUCH DESIGN, ACQUISITION AND CONSTRUCTION, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$9,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM BOND ANTICIPATION NOTES, TO TEMPORARILY FINANCE A PORTION OF THE COST OF SUCH DESIGN, ACQUISITION AND CONSTRUCTION; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AND ADOPTING OTHER PROVISIONS RELATED THERETO.**

Be It Ordained by the Council of the City of Nitro, West Virginia:

## ARTICLE I

### STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and other applicable provisions of law.

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

A. The City of Nitro, West Virginia (the "City" or the "Issuer"), now owns a sewerage system (the "System"), both within and without the corporate limits of the City, consisting of a sewage treatment plant or plants and its collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations and ejector stations and all other appurtenances, extensions, improvements and betterments necessary, appropriate, useful, convenient or incidental for the collection, treatment, purification and disposal in a sanitary manner of liquid and solid waste, sewage and industrial waste.



B. In accordance with Section 2 of the Act, the System is under the supervision and control of the Utility Board of the City (the "Utility Board").

C. The Utility Board has presented a petition to the City for the acquisition and construction of certain extensions, additions, betterments and improvements to the System (the "Project") as more fully described on Exhibit A, the enactment of this Ordinance and the issuance of the Sewerage System Revenue Bonds (the "Bonds") and the Sewerage System Bond Anticipation Notes (the "Notes"). The City has financed a portion of the design costs through the issuance of its \$800,000 Sewerage System Design Bond Anticipation Notes, Series 2013 A (The Huntington National Bank), dated September 20, 2013 (the "Series 2013 A Notes").

D. The estimated maximum cost of design, acquisition and construction of the Project is approximately \$7,600,000, which will be obtained from the proceeds of the Bonds and the Notes herein authorized.

E. The acquisition and construction of the System were financed or with proceeds of certain obligations of the City, which obligations are designated and have lien positions with respect to the Bonds as follows:

	<u>Designation</u>	<u>Lien Position</u>
1.	\$4,575,502 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 1996 A, dated December 10, 1996 (the "Series 1996 A Bonds");	First Lien
2.	\$2,050,000 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 2000 A, dated June 28, 2000 (the "Series 2000 A Bonds");	First Lien
3.	\$543,800 Sewer Revenue Bonds (West Virginia SRF Program), Series 2001 A, dated June 5, 2001 (the "Series 2001 A Bonds"); and	First Lien
4.	\$1,910,778 Sewer Revenue Bonds, (West Virginia SRF Program), Series 2009 A, dated November 12, 2009 (the "Series 2009 A Bonds").	First Lien

The Series 1996 A Bonds, the Series 2000 A Bonds, the Series 2001 A Bonds, and the Series 2009 A Bonds are collectively referred to as the "Prior Bonds." The Series 2013 A Notes will be paid in full with the issuance of the Bonds and/or Notes.

F. The City derives revenues from the System, and, except for the pledges thereof to secure and pay the Prior Bonds, said revenues are not pledged or encumbered in any manner.

G. It is necessary and essential to acquire and construct the Project, generally described on Exhibit A hereto and incorporated herein by reference, in order to preserve the public health, to be financed through the issuance of the Bonds, in the aggregate principal amount not to exceed \$10,000,000. The period of usefulness of the System after completion of the Project is not less than 40 years.

H. The estimated revenues to be derived in each year after the enactment of this Ordinance from the operation of the System will be sufficient to pay all Operating Expenses of the System, the principal of and interest on the Prior Bonds, the Notes and/or the Bonds and all funds and accounts and other payments provided for in this Ordinance and the Prior Ordinances.

I. The Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the form set forth in Exhibit B attached hereto and incorporated herein by reference with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the City.

J. All things necessary to make the Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the City according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Bonds, will be timely done and duly performed.

K. The enactment of this Ordinance, and the execution and issuance of the Bonds, subject to the terms thereof, will not result in any breach of, nor constitute a default under, any instrument to which the City is a party or by which it may be bound or affected.

L. The City is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and the System; 95% or more of the Net Proceeds of the Bonds are to be used for local government activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City).

M. It is deemed necessary for the City to issue the Bonds in the aggregate principal amount of not more than \$10,000,000, to permanently finance the costs of the acquisition and construction of the Project and, prior to the issuance of the Bonds, to issue the Notes in the aggregate principal amount of not more than \$9,000,000, to temporarily finance a portion of the costs of design, acquisition and construction of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; repayment of any interim financing notes; interest on the Notes; interest on the Bonds prior to and during construction or acquisition and for six 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, any fees or expenses of the Original Purchaser or DEP, commitment fees, discount, initial fees for the service of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds, and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of the same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the City for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of the indebtedness incurred by the City for such purposes shall be deemed part of the Cost of the Project.

N. It is in the best interests of the City that the Bonds be sold to the Original Purchaser(s) pursuant to the terms and provisions set forth in the Supplemental Resolution.

O. Prior to the issuance of the Bonds, the City shall obtain (i) a certificate from an independent certified public accountant stating that the coverage and parity tests of the Prior Bonds have been met; and (ii) the written consent of the registered owners of the Prior Bonds to the issuance of the Bonds on a parity with the Prior Bonds. The Bonds shall be issued with a lien on the Net Revenues on a parity with the lien held by the registered owners of the Prior Bonds. Other than the Prior Bonds and the Notes, there are no other outstanding bonds or obligations of the City which are secured by revenues or assets of the System.

The Notes shall be issued junior and subordinate to the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. The Notes shall be payable solely from and secured by the proceeds of the Bonds to be sold to the Authority on behalf of the SRF Program or any other WDA Program.

P. The City has complied with all requirements of West Virginia law relating to the authorization of the acquisition, construction and operation of Project and the System and issuance of the Bonds and the Notes, or will have so complied prior to the 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 not subject to appeal or rehearing.

Q. The City will not permit, at any time, any of the proceeds of the Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code.

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

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Bonds authorized to be issued hereunder by those who shall own the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the City and such Registered Owners, and the covenants and agreements herein set forth to be performed by

the City shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Bonds issued hereunder, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bond by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. Except as provided below, terms used in this Ordinance have the meanings set forth below, unless the context expressly requires otherwise.

“Act” shall mean Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

“Authority” shall mean the West Virginia Water Development Authority, which may be one of the original purchasers and Registered Owners of the Bonds and the Notes on behalf of the SRF Program and the WDA Program, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

“Bond Counsel” shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the City or the Utility Board, and shall initially mean Jackson Kelly PLLC, Charleston, West Virginia.

“Bond Insurer” shall mean any entity which shall insure all or any portion of the payment of principal of and interest on the Bonds and which shall be designated as such in the Supplemental Resolution, and in the event no such entity is so designated, all references in this Ordinance to the Bond Insurer shall be null and void and have no force and effect.

“Bond Register” shall mean the books of the City maintained by the Registrar for the registration and transfer of the Bonds.

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

“Bondholder” or “Holder of the Bonds” or “Owner of the Bonds” or “Registered Owner” or any similar term shall mean any person who shall be the Registered Owner of any Outstanding Bond as hereinafter defined.

“Bonds” shall mean the not more than \$10,000,000 in aggregate principal amount of Sewerage System Revenue Bonds of the City, authorized by this Ordinance to be issued from time to time in one or more series as designated in Supplemental Resolutions.

“Bonds Construction Trust Fund” shall mean the Bonds Construction Trust Fund created by Section 4.01 D hereof.

“Bond Purchase Agreement” shall mean, collectively, the Bond Purchase Agreements by and among the Authority, the DEP and the City, providing for the purchase of all

or a part of the Bonds from the City by the Authority, the forms of which are attached as exhibits in the Supplemental Resolution.

“Closing Date” shall mean the date or dates upon which there is an exchange of the Bonds and the Notes for all or a portion of the proceeds of the Bonds and the Notes from the Original Purchaser.

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

“Commission” shall mean the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Commission.

“Completion Date” shall mean the completion date of the Project as defined in the SRF Regulations.

“Consulting Engineers” shall mean S&S Engineers, Inc., Charleston, West Virginia, or any engineer or firm of engineers, licensed by the State, which shall at any time hereafter be retained by the City as Consulting Engineers for the System in accordance with Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended.

“Costs of the Project” shall mean those costs described in Section 1.02(M) hereof to be a part of the cost of the acquisition and construction of the Project.

“Council” or “City Council” shall mean the Council of the City.

“DEP” shall mean the West Virginia Department of Environmental Protection or any other agency of the State of West Virginia that succeeds to the function of the DEP.

“Depository Bank” shall mean the bank or banks to be designated as such in the Supplemental Resolution, and its successors and assigns.

“DTC” shall mean The Depository Trust Company, New York, New York.

“Fiscal Year” shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

“Independent Accountants” or “Independent Certified Public Accountants” shall mean any firm of certified public accountants which shall be retained by the City as independent accountants for the System.

“Mayor” shall mean the Mayor of the City.

“Municipal Bond Insurance Policy” shall mean the municipal bond insurance policy, if any, issued by the Bond Insurer simultaneously with the delivery of the Bonds, insuring

the payment of the principal of and interest on all or any of the Bonds in accordance with the terms thereof.

“Notes” shall mean the not more than \$9,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes of the City, authorized by this Ordinance to be issued in one or more series as designated in the Supplemental Resolution.

“Ordinance” shall mean this Ordinance.

“Original Purchaser” shall mean, collectively, either the Authority and/or the Underwriter which are expected to be the purchasers of the Bonds and/or the Notes directly from the City, as determined by resolutions supplemental hereto.

“Outstanding” when used with reference to Bonds, as of any particular date, describes all such Bonds theretofore and thereupon being authenticated and delivered, except (i) any such Bond canceled by the Registrar, at or prior to said date; (ii) any such Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity of any such Bond, shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any such Bond deemed to have been paid as provided in Section 6.13 hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any such Bond registered to the City.

“Paying Agent” shall mean the West Virginia Municipal Bond Commission or other entity designated as such for the Notes and Bonds in Supplemental Resolutions.

“Private Business Use” shall mean 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” shall mean the extensions, additions, betterments and improvements to the existing sewerage system of the City described in Exhibit A attached hereto.

“Purchase Price,” for the purpose of computation of the Yield of the Bonds, has the same meaning as the term “issue price” in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Bonds of each maturity is sold or, if the Bonds are privately placed, the price paid by the first buyer of the Bonds or the acquisition cost of the first buyer. “Purchase Price,” for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Bonds.

“Recorder” shall mean the Recorder of the City.

“Registrar” shall mean the entity named as such in the Supplemental Resolution.

“Regulations” shall mean the temporary and permanent regulations promulgated under the Code.

“Reserve Account” shall mean, collectively, one or more reserve accounts for the Bonds created by Section 4.03 hereof.

“Reserve Accounts” shall mean, collectively, the respective Reserve Accounts created for the Prior Bonds and the Bonds.

“Reserve Requirement” shall mean, as of any date of calculation, the lesser of (i) 10% of the original stated principal amount of the Bonds; (ii) the maximum amount of principal and interest which will become due on the Bonds in any year; or (iii) 125% of the average amount of principal and interest which will become due on the Bonds.

“Sinking Fund” shall mean, collectively, one or more Sinking Funds for the Bonds created by Section 4.03 hereof.

“Sinking Funds” shall mean, collectively, the respective Sinking Funds created for the Prior Bonds and the Bonds.

“SRF Program” shall mean the West Virginia Clean Water SRF 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” shall mean the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

“State” shall mean the State of West Virginia.

“Supplemental Resolution” shall mean any resolution, ordinance or order of the City supplementing or amending this Ordinance and, when preceded by the article “the”, refers specifically to the supplemental resolutions authorizing the sale of one or more series of the Bonds or the Notes; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Bonds or the Notes and not so included may be included in another Supplemental Resolution.

“Surplus Revenues” shall mean the Net Revenues not required by the Prior Ordinances and this Ordinance, as supplemented and amended, to be set aside and held in, including but not limited to, any sinking funds, reserve accounts and renewal and replacement funds.

“System” shall mean the complete existing sewerage system now owned by the City and managed by the Utility Board, consisting of a sewerage treatment and collection

system, and shall include any extensions, additions, betterments and improvements thereto, including the Project, hereafter acquired or constructed for the sewerage system from any sources whatsoever, both within and without the City.

“Term Bonds” shall mean the Bonds subject to mandatory sinking fund redemption as described in Section 3.12 hereof.

“Underwriter” shall mean one or more underwriting firms designated as such in the Supplemental Resolution.

“WDA Program” shall mean the Authority’s loan program, under which the Authority purchases the water development revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of the water development revenue bonds of the Authority.

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

Additional terms and phrases are defined in this Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with general accepted accounting principles.

The terms “herein”, “hereunder”, “hereby”, “hereto”, “hereof” and any similar terms refer to this Ordinance; and the term “hereafter” means after the date of the enactment of this Ordinance.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Ordinance so numbered.



ARTICLE II  
AUTHORIZATION OF EXTENSIONS, ADDITIONS,  
BETTERMENTS AND IMPROVEMENTS TO SYSTEM; AUTHORIZATION OF THE  
NOTES

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements. There is hereby authorized and ordered the acquisition and construction of the Project at an estimated cost of not to exceed \$7,604,000, in accordance with plans and specifications prepared by the Consulting Engineers, approved by the DEP and the City, and on file in the office of the Utility Board.

The City has received bids and will enter into contracts for the acquisition and construction of the Project which are in an amount and otherwise compatible with the financing plan submitted to the Original Purchaser.

Section 2.02. Authorization of the Notes. To provide funds for a portion of the cost of acquisition and construction of the Project, pending issuance of all or a portion of the Bonds to the Authority on behalf of the SRF Program, there shall be and hereby are authorized to be issued "Sewerage System Bond Anticipation Notes," of the City in an aggregate principal amount of not to exceed \$9,000,000. The exact amount and terms of the Notes shall be approved by the Council of the City in a resolution supplemental hereto. The text of the Notes shall be in substantially the form set forth in Exhibit B attached hereto.

Section 2.03. Security for the Notes. The principal of the Notes shall be payable solely from and secured by the proceeds of the Bonds to be sold to the Authority on behalf of the SRF Program or any other WDA Program. The Notes shall not, in any event, be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the proceeds of the Bonds to be sold to the Authority on behalf of the SRF Program or any other WDA Program. No Owner of the Notes shall ever have the right to compel the exercise of the taxing power of the City to pay the Notes or any interest thereon. The interest on the Notes shall be paid from the net revenues of the System but such payment shall be subordinate to the Prior Bonds.

Section 2.04. Designation of Notes as "Qualified Tax-Exempt Obligations." The City hereby designates the Notes as "qualified tax-exempt obligations" for purposes of Section 265(b)(3)(B) of the Code and covenants that the Notes do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income tax purposes (excluding, however, obligations issued to currently refund any obligation of the Issuer to the extent the amount of the refunding obligation does not exceed the amount of the refunded obligation and private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code), including the Notes, have been or shall be issued by the City, including all subordinate entities of the City, during the calendar year 2015, all as determined in accordance with the Code.

## ARTICLE III

### AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Bonds. For the purposes of capitalizing interest on the Bonds, funding the Reserve Account for the Bonds, paying Costs of the Project not otherwise provided for (including the payment of the Notes), paying costs of issuance of the Bonds and related costs, or any or all of such purposes, as determined by Supplemental Resolutions, there shall be and hereby are authorized to be issued the Bonds of the City. The Bonds shall be issued from time to time in one or more series as set forth in the Supplemental Resolutions, designated as "Sewerage System Revenue Bonds", in an aggregate principal amount of not more than \$10,000,000. The Bonds shall be issued in such principal amounts, shall have the series designation, shall be dated as of the date of delivery thereof, shall bear interest at such rate or rates, not exceeding the then legal maximum rate, and shall mature at such times and in such amounts as shall be set forth in the Supplemental Resolution. The repayment of principal, interest and the SRF Administrative Fee, if any, on the Bonds shall be as set forth in the Supplemental Resolution. The Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and as the Council of the City shall prescribe by resolution (or by supplemental or amendatory ordinance of said Council as said Council shall determine) adopted in connection with the sale of such Bonds.

The 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 Bonds shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar.

Each series of Bonds shall be issued in fully registered form, in such denominations and shall have such terms as set forth in the Supplemental Resolution. The Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond in aggregate principal amount equal to the amount of the Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of the Bonds.

Section 3.02. Execution of Bonds. The Bonds shall be executed in the name of the City by the Mayor and attested by the City Recorder, and the seal of the City shall be affixed thereto or imprinted thereon. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the City before the Bonds so signed and sealed have been sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the City by such person as, at the actual time of the execution of such Bonds, shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Exhibit B, shall have been duly manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be, and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide owner for value.

So long as any of the Bonds remain Outstanding, the City, through the Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

Bonds shall be transferable only upon the books of the Registrar, by the Registered Owner thereof in person or by the Registered Owner's attorney duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or the Registered Owner's duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Registrar. For every such exchange or transfer of Bonds, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Registrar incurred in connection therewith, which sum or sums shall be paid by the City. The Registrar shall not be obliged to make any such exchange or transfer of Bonds during the 15 days preceding an interest payment date on the Bonds, or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the City may, in its discretion, issue and deliver a new Bond in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Registered Owner's furnishing the City proof of ownership thereof and

satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur and the Registrar shall authenticate the new Bond. All Bonds so surrendered shall be canceled by the Registrar and held for the account of the City. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the City may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Bonds be at any time found by anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Bonds not to be Indebtedness of the City. The Bonds shall not, in any event, be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided on a parity with the Prior Bonds. No Registered Owner of the Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay the Bonds or any interest thereon.

Section 3.07. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all the Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System on a parity with the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and the Prior Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund established herein or in the Prior Ordinances are hereby irrevocably pledged to the payment of the principal of and any interest on the Bonds and the Prior Bonds as the same become due.

Section 3.08. Form of Bonds. The text of the Bonds shall be substantially as set forth in Exhibit B, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof.

Section 3.09. Sale of Bonds. The Bonds shall be sold pursuant to the terms and conditions of a loan agreement or bond purchase agreement as set forth in a resolution supplemental hereto.

Section 3.10. Bonds are Issued as Parity Bonds. The Bonds are issued as and shall constitute additional Parity Bonds in accordance with the Prior Ordinances. Prior to the issuance of the Bonds, the following must occur:

A. The City must receive the written consent of the Authority for the issuance of parity bonds.

B. The coverage and parity requirements of the Prior Ordinances must be satisfied.

C. Unless waived in writing by the Authority, the City or the Utility Board must enter into written contracts for the immediate design, acquisition or construction of the Project not later than simultaneously with the delivery of the Bonds.

D. The Bonds shall not be issued unless all the payments into the respective funds and accounts provided for in the Prior Ordinances on account of the Prior Bonds and any other payments provided for in the Prior Ordinances, shall have been made in full as required to the date of delivery of the Bonds.

Section 3.11. Delivery of Bonds. The City shall execute and deliver the Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Bonds to the Original Purchaser upon receipt of the documents set forth below:

- (A) A request and authorization to the Registrar on behalf of the City, signed by an Authorized Officer, to authenticate and deliver the Bonds to the Original Purchaser;
- (B) Copies of this Ordinance and the Supplemental Resolution certified by the City Recorder; and
- (C) The unqualified approving opinion of Bond Counsel regarding the Bonds.

## ARTICLE IV

### APPLICATION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01. Application of Bond Proceeds. From the moneys received from the sale of the Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. All interest accrued on the Bonds from the date thereof to the date of delivery thereof shall be deposited with the Commission in the Sinking Fund and applied to payment of interest on the Bonds on the first interest payment date.

B. From the proceeds of the Bonds, there shall be deposited with the Commission in the Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

C. Next, from the proceeds of the Bonds, there shall be deposited with the Commission in the Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Reserve Account.

D. There is hereby created and established with the Depository Bank a special fund, designated the "Bonds Construction Trust Fund". The remaining moneys derived from the sale of the Bonds shall be deposited by the City in the Bonds Construction Trust Fund. Moneys in the Bonds Construction Trust Fund shall be used solely to pay Costs of the Project and costs of issuance of the Bonds and until so transferred or expended, are hereby pledged as additional security for the Bonds. All costs of issuance shall be paid within 60 days of the Closing Date.

E. After completion of acquisition and construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, the City shall (i) expend any remaining proceeds of the Bonds as provided in the Supplemental Resolution and (ii) file a schedule with the Authority and the DEP, setting forth the actual costs of the Project and sources of funds used therefor.

Section 4.02. Disbursements From the Bond Construction Trust Fund. Except as provided in Section 4.01 hereof, disbursements from the Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Utility Board of the following:

A certificate, signed by the general manager of the Utility Board 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 disbursements 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 Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the City.

The City shall expend all proceeds of the Bonds within 3 years of the date of issuance of the Bonds.

Section 4.03. Funds and Accounts; Flow of Funds. The funds and accounts established by the Prior Ordinances are hereby continued. In addition to the funds and accounts established by the Prior Ordinances, there are hereby created at the Commission the Sinking Fund, the Reserve Account and the Redemption Account with respect to the Bonds as further described in the Supplemental Resolution. Following the monthly payment of Operating Expenses, the City shall make monthly payments to the Commission for the Prior Bonds as required under the Prior Ordinances. The monthly payments to the Commission for the Bonds shall be set forth in the Supplemental Resolution.

Moneys in the respective Sinking Funds shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due. Moneys in the respective Reserve Accounts shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due, when other moneys in the respective Sinking Funds are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the respective Reserve Accounts shall be transferred, not less than once each year, to the Bonds Construction Trust Fund prior to completion of the Project and thereafter, to the respective Sinking Funds.

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

Moneys in the Sinking Funds and the Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 4.04 hereof.

If, on any monthly payment date, the revenues are insufficient to place the required amount in any of the funds or accounts as provided herein and in the Prior Ordinances, the deficiency shall be made up in subsequent payments, in addition to the payments which would otherwise be required to be made into the funds and accounts on subsequent payment dates.

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 First Lien Bonds and the Bonds and thereafter, with respect to the Second Lien Bonds, in accordance with the respective principal amounts then Outstanding.

The City 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.

Except as provided above and in the Supplemental Resolution, all sinking fund, reserve account, and renewal and replacement fund payments shall remain as governed by the Prior Ordinances.

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

Section 4.04. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank or such other bank or national banking association holding such fund or account, as the case may be, at the direction of the City in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the Prior Ordinances, the need for such moneys for the purposes set forth herein and the specified restrictions and provisions set forth in this Section 4.04.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount. The Commission, the Depository Bank or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss of such liquidation. The Depository Bank or such other bank or national banking association may make any and all investments permitted by this section through its own 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 City, at least once each year (or more often if reasonably requested by the City), a summary of such funds, accounts and investment earnings. The City shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Bonds from gross income for federal income tax purposes.



ARTICLE V

DEFAULT AND REMEDIES

Section 5.01. Events of Default. Each of the following events shall constitute an “Event of Default” with respect to the Bonds:

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

(2) If default occurs in the City’s observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Ordinance, any supplemental resolution or in the Bonds, and such default shall have continued for a period of 30 days after the City shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Registered Owner of a Bond; or

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

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

Section 5.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond or any Bond Insurer if the Bonds are insured 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 City to perform its duties under the Act and the Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the City to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

Section 5.03. Appointment of Receiver. Any Registered Owner of a Bond or any Bond Insurer if the Bonds are insured may, by proper legal action, compel the performance of the duties of the City under the Ordinance and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to the 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 City, with the power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Ordinance and the Act.

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

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Ordinance for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, possession of the System shall be surrendered to the City 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 City and for the joint protection and benefit of the City 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 City 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 Ordinance, and the title to and ownership of the System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE VI

### ADDITIONAL COVENANTS OF THE CITY

All the covenants, agreements and provisions of the Prior Ordinances shall remain in full force and effect as long as the Prior Bonds and the Bonds are outstanding and shall apply to the Bonds as if fully set out herein. The following covenants are supplemental and in addition to the covenants set forth in the Prior Ordinances.

Section 6.01. Completion of Project; Permits and Orders. The City shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing enterprise in good condition and in compliance with all federal and state requirements and standards.

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

Section 6.02. Insurance and Construction Bonds. The City hereby covenants and agrees that so long as the Bonds remain Outstanding, the City 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. The City will require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Original Purchaser. Such insurance shall be made payable to the order of the Registered Owners, the City, the prime contractor and all subcontractors, as their interests may appear. The City will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, to protect the interests of the City, the Registered Owners, the prime contractor and all subcontractors as their interests may appear during construction of the Project in the full insurable value thereof. In time of war, the City shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be disposed of as provided in the Ordinance and otherwise shall be placed in the Renewal and Replacement Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The City will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The City shall carry such other insurance as is required by the Original Purchaser, including but not limited to flood insurance and business interruption insurance, to the extent available at

reasonable cost to the City. The City shall verify all such insurance prior to commencement of construction.

The City 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 City shall verify such bonds prior to commencement of construction.

Section 6.03. Issuance of Other Obligations Payable Out of Revenues. In addition to the limitations on the issuance of parity obligations set forth in the Prior Ordinances, no parity obligations payable out of revenues of the System shall be issued after the issuance of the Bonds without the prior written consent of the Registered Owner of the Prior Bonds then Outstanding and without complying with the parity requirements of the Prior Ordinance and the Supplemental Resolution.

Section 6.04. Engineering Services and Operating Personnel. Prior to the issuance of the Bonds, the City shall obtain the certificate of the Consulting Engineers, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to 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 City shall provide and maintain competent and adequate engineering services satisfactory 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 City at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

Section 6.05. Compliance With Law. The City hereby covenants and agrees to perform, satisfy and comply with all terms, conditions and requirements of all applicable laws, rules and regulations issued by the Authority, the DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

Section 6.06. Books; Records and Audit. The City 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 City shall permit the Original Purchaser, 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 City shall submit to the Original Purchaser 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 any state and federal grants or other sources of financing for the Project.

All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the City.

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

The accounting system for the System shall follow current generally accepted accounting principles and safeguards in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the City. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other bookkeeping records as prescribed by the City. The City 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 City shall be reported to such agent of the City as the Council shall direct.

The City shall file with the Original Purchaser, and shall mail in each year to any Registered Owner or Owners of Bonds requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses and Net Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Ordinance and the status of all said funds and accounts.
- (C) The amount of any bonds, notes or other obligations Outstanding.

The City shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, and, shall mail upon request, and make available generally, the report of the Independent Accountants, or a summary thereof, to any Registered Owner or Owners of Bonds. The report of said audit shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet its Operating Expenses and debt service and reserve requirements.

Section 6.07. Operating Budget. The Utility Board shall annually prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for the operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Original Purchaser within 30 days of the adoption thereof.

Section 6.08. Tax Covenants. The City hereby further covenants and agrees as follows:

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

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

C. PRIVATE LOAN LIMITATION. The City shall assure that not in excess of the lesser of 5% of the proceeds of the Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

D. FEDERAL GUARANTEE PROHIBITION. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

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

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

Section 6.09. Rebate Covenant. The City is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System. As covenanted above, the Bonds are not private activity bonds within the meaning of the Code, and ninety-five percent (95%) or more of the net proceeds (as defined in the Code) of the Bonds will be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City). The City reasonably expects to expend the proceeds of the Bonds within the time period that would provide an exception from

the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the City is in fact subject to such rebate requirements, the City hereby covenants to rebate to the United States the amounts required by the Code and to take all steps necessary to make such rebates. In the event the City fails to make such rebates as required, the City shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of interest on the Bonds.

Section 6.10. Arbitrage. The City covenants that (i) it will not take, or permit or suffer to be taken, any action with respect to the proceeds of the Bonds which would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the 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 6.11. Tax Certificate and Rebate. The City shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Bonds. In addition, the City covenants to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds and fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of the Ordinance.

If it is determined that the City does not qualify for an exception to Section 148 of the Code or the City is otherwise subject to rebate in connection with the Bonds, the City shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the City shall deposit, or cause to be deposited, with the Depository Bank in a separate fund designated the Rebate Fund, such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder, if any, and used only for payment of rebatable arbitrage to the United States. The City shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the City to be used for any lawful purpose of the System. The City shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States

which are required, the City shall assure that such payments are made by the City to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the City shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the City. The City may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the City may deem appropriate in order to assure compliance with this Section 6.11. The City shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 6.11 in accordance with the requirements of Section 148(f) of the Code. In the event the City fails to make such rebates as required, the City shall pay the required rebate amount and all interest, penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

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

Section 6.12. Securities Laws Compliance. The City will provide the Original Purchaser, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Original Purchaser may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240). The City will also deliver a continuing disclosure agreement or certificate in form acceptable to the Original Purchaser sufficient to ensure compliance with SEC Rule 15c2-12, as amended from time to time.

Section 6.13. Defeasance of Bonds. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the Registered Owners of the Bonds, the principal thereof, and redemption premium, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then the pledge of Net Revenues and any other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the City to the Registered Owners 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 Bonds from gross income for federal income tax purposes.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such



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

Section 6.14. Rates and Charges. The City has obtained any and all approvals of rates and charges required by state law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the City duly enacted on March 5, 2004, which rates are incorporated herein by reference as a part hereof.

So long as the Bonds are outstanding, the City 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 this Ordinance. In the event the schedule of rates, fees and charges initially established for the System in connection with the Bonds shall prove to be insufficient to produce the required sums set forth in this Ordinance, the City 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 Ordinance. In any event, subject to any requirements of law, the City shall not reduce the rates or charges for services set forth in the rate ordinance described above.

The City shall diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent

to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The City further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System, and any services and facilities of the water system, if so owned by the City, 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 City, the City 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 Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 6.15. Contracts. The City shall, simultaneously with the delivery of the Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

## ARTICLE VII

### REGISTRAR

Section 7.01. Appointment of Registrar. The Registrar for the Bonds shall be appointed pursuant to the Supplemental Resolution. The City is hereby authorized and directed to enter into an agreement with the Registrar, the substantial form of which agreement is to be approved by Supplemental Resolution.

Section 7.02. Responsibilities of Registrar. The recitals of fact in the Bonds shall be taken as statements of the City, and the Registrar shall not be responsible for their accuracy. The Registrar shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Bonds by the City. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication and Registration on the Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described above.

Section 7.03. Evidence on Which Registrar May Act. Except as otherwise provided herein, the Registrar shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. Whenever the Registrar shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the City, but in its discretion the Registrar may instead accept other evidence of such fact or matter.

Section 7.04. Compensation and Expenses. The City shall pay to the Registrar from time to time reasonable compensation for all services, including the transfer of registration of Bonds, the first exchange of Bonds and the exchange of Bonds in the event of partial redemption, incurred in the performance of its duties hereunder.

Section 7.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Registered Owners or effect or aid in any reorganization growing out of the enforcement of the Bonds or this Ordinance, whether or not any such committee shall represent the Registered Owners of a majority in principal amount of the Bonds Outstanding.

Section 7.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than 60 days' written notice to the City. A copy of such notice shall also be mailed to each Registered

Owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the City or the Registered Owners, in which event such resignation shall take effect immediately; provided that, in no event shall such resignation take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 7.07. Removal. The Registrar may be removed at any time by the City, the Bond Insurer or the Registered Owners of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the City, the Bond Insurer or by such Registered Owners or their attorneys duly authorized in writing and delivered to the City, as the case may be. Copies of each such instrument shall be delivered by the City to the Registrar. Such removal shall take effect upon the date stated in such instrument; provided that, in no event shall such removal take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 7.08. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Registered Owners of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Registered Owners or their attorneys duly authorized in writing and delivered to the City and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the City shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Registered Owners. A copy of such notice shall also be mailed to each Registered Owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Any successor Registrar appointed by the City shall, immediately and without further act, be superseded by a Registrar appointed by such Registered Owners. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the City written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Registered Owner may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance.

Section 7.09. Transfer of Rights and Property to Successor. Any predecessor Registrar shall pay over, assign and deliver any moneys, books and records held by it to its successor.

Section 7.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall

be a bank, trust company or national banking association meeting the requirements set forth in Section 7.08 hereof.

Section 7.11. Adoption of Authentication. In case any of the Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Bonds so authenticated, and, in case any Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Bonds in the name of the predecessor Registrar or in its own name.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01. Modification or Amendment. Prior to the issuance of the Bonds, this Ordinance may be amended or supplemented in any way by a Supplemental Resolution. All provisions required by the Bond Insurer, if any, shall be set forth in the Supplemental Resolution and to the extent they constitute an amendment or modification of this Ordinance, shall be controlling. Following issuance of the Bonds, no material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Registered Owners shall be made without the consent in writing of the Registered Owners of the Bonds then Outstanding and to be affected by said modification; provided, however, that no change shall be made in the maturity of any Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the City to pay such principal and interest out of the revenues of the System without the consent of the Registered Owner thereof. No amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds required for consent to the above permitted amendments or modifications. Notwithstanding the foregoing, this Ordinance may be amended without the consent of any Registered Owner as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest on the Bonds from gross income of the Registered Owners thereof.

Section 8.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Bonds.

Section 8.03. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, other than the Prior Ordinances, in conflict with this Ordinance are, to the extent of such conflict, repealed.

Section 8.04. Covenant of Due Procedure. The City covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the final enactment and passage of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Recorder and members of Council and the Utility 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 8.05. Statutory Notice and Public Hearing. Upon adoption hereof, the abstract of this Ordinance in the form set forth in Exhibit C attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks, with at least 6 full days intervening between each publication, in the Charleston Gazette-Mail a qualified newspaper

published and of general circulation in the City of Nitro, together with a notice stating that this Ordinance has been adopted and that the City contemplates the issuance of the Bonds, and that any person interested may appear before the Council upon a certain date, 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 City for review by interested persons during office hours of the City. The Council hereby determines that the abstract contains sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Section 8.06. Effective Date. This Ordinance shall take effect immediately following public hearing and final reading hereof.

**CERTIFICATE OF TRUTH AND ACCURACY**

I, the undersigned, as Recorder of the City of Nitro, Kanawha County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of the official record of the City of Nitro, such records being in the custody of the undersigned and maintained at the City of Nitro, City Hall, Nitro, Kanawha County, West Virginia, and that the action taken by the Council in the foregoing document remains in full force and effect and has not been amended.

Dated this 3<sup>rd</sup> day of December, 2015.

\_\_\_\_\_  
Recorder

[SEAL]



## **EXHIBIT A**

### **DESCRIPTION OF PROJECT**

The design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City, including: the extension of service to approximately 94 customers in the Blakes Creek and Eastwood Acres areas; the replacement of sewer lines on Bailes Drive; the replacement of Pump Station No. 6; the installation of telemetry at eight major pump stations; the installation of storm sewers in the Pump Station No. 7 drainage area; relining existing 42 inch clay tile brick sewer line through Board of Education property and rehabilitation of manholes; replacement of existing belt filter press with a new, larger press; replacement of existing sewer line on Reeves Drive; relocation of approximately 200 hundred linear feet of the existing eight-inch force mains at the Poca High School pump station and all appurtenances necessary therefor.

EXHIBIT B

[FORM OF BOND]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA  
CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS, SERIES \_\_\_\_\_

No. AR-\_\_

\$

KNOW ALL MEN BY THESE PRESENTS: That CITY OF NITRO, a municipal corporation and political subdivision of the State of West Virginia, in Kanawha County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority "), or registered assigns, the sum of DOLLARS (\$\_\_\_\_\_), or such lesser amount as shall have been advanced to the City 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 \_\_\_\_\_, \_\_\_\_\_, 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 of \_\_\_\_\_ percent (\_\_\_\_%) per annum as set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Ordinance) on this Bond shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the Paying Agent(as defined in the hereinafter described Ordinance). The interest on this Bond is payable by check or draft mailed to the registered owner hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Ordinance) on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable so long as the Authority is registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West

Virginia Department of Environmental Protection (the "DEP") and as otherwise provided by the Loan Agreement dated \_\_\_\_\_, among the Authority, the DEP and the City.

This Bond is issued: (i) to pay the costs of design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City (the "Project"); (ii) to fund a reserve account for this Bond; and (iii) to pay certain costs of issuance hereof and related costs. The existing sewerage system of the City, the Project and any further additions, betterments and 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 of the Code of West Virginia, 1931, as amended (the "Act"), and in Ordinance passed by the City 20\_\_\_\_\_, and a Supplemental Resolution adopted by the City on \_\_\_\_\_, 20\_\_\_\_ (collectively, the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Ordinance.

This Bond is issued on a parity with respect to liens, pledge and source of and security for payment with the Prior Bonds, all as defined in the Ordinance.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues as defined in the Ordinance, to be derived from the operation of the System, on a parity with the Prior Bonds moneys in the Reserve Account created under the Ordinance (the "Series \_\_\_\_\_ Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City 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 \_\_\_\_\_ Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on this Bond and all 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 \_\_\_\_\_ Bonds Reserve Account an amount 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 obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of this Bond for the terms of which reference is made to the Ordinance. Remedies

provided the registered owners of this Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of the Registrar, kept for that purpose at the office of the Registrar, by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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 City, 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 City for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, CITY OF NITRO has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, \_\_\_\_\_.

[SEAL]

\_\_\_\_\_

\_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_  
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

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

Date: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

Total \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE



[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ the  
within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney  
to transfer the said Bond on the books kept for registration of the within Bond of the said City  
with full power of substitution in the premises.

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

In the presence of:

**FORM OF NOTE**

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA  
CITY OF NITRO  
SEWER REVENUE BOND ANTICIPATION NOTES, SERIES 2015 B

No. BR-1

\$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That on this \_\_\_\_ day of \_\_\_\_\_, 2015, the CITY OF NITRO, a municipal corporation and political subdivision of the State of West Virginia in Kanawha County of said State (the "City"), for value received, hereby promises to pay, but only from the special funds provided therefor, as hereinafter set forth, to \_\_\_\_\_ (the "Owner"), or registered assigns, the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), on \_\_\_\_\_, or upon the issuance of revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes, whichever shall occur earlier. The interest on this Note shall be at the rate of \_\_\_\_% per annum, payable semiannually on the 1<sup>st</sup> day of each \_\_\_\_\_ and \_\_\_\_\_, commencing \_\_\_\_\_, 20\_\_\_. The entire outstanding principal balance of this Note and all interest accrued hereon shall be payable in full on \_\_\_\_\_, 20\_\_, or upon the issuance of revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes, whichever shall occur earlier.

The annual interest rate for this Note is computed on a simple interest/365 day basis.

The Registrar, as hereinafter defined, shall notify the City of the amount of interest so accrued. Interest is payable by check or draft mailed to the Owner at the address as it appears on the books of Registrar, as hereinafter defined, or by wire transfer or other mutually agreeable method. This Note shall be payable as to principal upon surrender at the principal office of The Huntington National Bank, as registrar and paying agent (the "Registrar"), in any coin or currency which on the date of payment of principal is legal tender for the payment of public and private debts under the laws of the United States of America.

This Note is subject to prepayment without penalty in whole or in part after \_\_\_\_\_, 20\_\_, upon the issuance of revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes.

This Note is issued for the purposes of (i) temporarily financing a portion of the costs of the acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage system of the City (the "Project"); and (ii) paying certain costs of issuance and related costs.

This Note 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 of the Code of West Virginia, 1931, as amended (the "Act"), and an Note Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2015, as supplemented by a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2015 (collectively, the "Ordinance"), and is subject to all the terms and provisions thereof.

THIS NOTE IS ISSUED JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S: (I) SEWER REVENUE BONDS (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SERIES 1996 A, DATED DECEMBER 10, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,575,902 (THE "SERIES 1996 A BONDS"); (II) SEWER REVENUE BONDS (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SERIES 2000 A, DATED JUNE 28, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,050,000 (THE "SERIES 2000 A BONDS"); (III) SEWER SYSTEM REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 5, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$543,900 (THE "SERIES 2001 A BONDS"); AND (IV) SEWER REVENUE BONDS (WEST VIRGINIA SRF PROGRAM), SERIES 2009 A, DATED NOVEMBER 12, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,910,778 (THE "SERIES 2009 A BONDS").

The principal of and interest on this Note are payable solely from and secured by a first lien on (1) the proceeds of any revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes; and (2) Surplus Revenues, if any, as defined in the Ordinance. This Note does not constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, nor shall the City be obligated to pay the same or the interest hereon except from the sources set forth above.

This Note and the interest thereon are, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

Subject to the requirements for transfer set forth below, this Note is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia. This Note is transferable only by the transfer of registration upon the books of the Registrar by the Owner in person or by its attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner or its duly authorized attorney.

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 Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Note, together with all other obligations of the City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

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

This Note shall not be valid or obligatory unless authenticated and registered by the Registrar by the execution of the Registrar's Certificate of Authentication and Registration attached hereto and incorporated herein.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_ this Note of the City of Nitro, and does hereby irrevocably constitute and appoint \_\_\_\_\_, attorney to transfer said Note on the books of said City with full power of substitution in the premises.

DATED: \_\_\_\_\_

IN THE PRESENCE OF: \_\_\_\_\_

## EXHIBIT C

### CITY OF NITRO, WEST VIRGINIA

#### NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on October \_\_\_, 2015, the Council of the City of Nitro, West Virginia (the "City") adopted an ordinance which, among other things:

1. Authorized the acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the City's existing sewerage system (the "System"), the temporary financing of such costs thereof through the issuance of not more than \$9,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes (the "Notes"), and the permanent financing of such costs thereof through the issuance of not more than \$10,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, from time to time in one or more series (the "Bonds").

2. Directed that the Notes and the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution.

3. Directed the continuation of the revenue fund and the disposition of the System revenues; provided for the payment of operating expenses of the System and debt service on the Bonds; directed the creation of sinking funds and reserve accounts for the Bonds and continuation of the renewal and replacement fund; and directed the creation of a bond construction trust fund and the disbursement of the Note and Bond proceeds.

4. Provided that the Bonds shall not be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, 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 such Net Revenues; provided certain conditions for the issuance of additional bonds.

5. Provided that the Notes shall not be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the proceeds of the Bonds to be sold to the West Virginia Water Development Authority on behalf of the SRF Program.

6. Provided for insurance coverage on the Project and the System, enforcement of collection of fees, rates or other charges for the System and other covenants in favor of the registered owners; established the events of default and the remedies of the registered owners; and provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The City contemplates the issuance of the Notes and 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 Nitro at a regular meeting on \_\_\_\_\_, 2015, at \_\_\_\_\_ p.m., in the Council Chambers, City Hall, Nitro, 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 of the City on \_\_\_\_\_, 2015, is on file with the Recorder for review by interested persons at the City Hall during regular office hours, to-wit: 8:00 a.m. to 4:00 p.m., Monday through Friday.

/s/ \_\_\_\_\_  
Recorder of the City of Nitro,  
West Virginia

CITY OF NITRO  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

NOTES SUPPLEMENTAL PARAMETERS RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, REDEMPTION PROVISION AND OTHER TERMS OF THE SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015, OF THE CITY OF NITRO; AUTHORIZING AND APPROVING AN INDENTURE, TAX CERTIFICATE, TAX COMPLIANCE POLICY, CONTINUING DISCLOSURE AGREEMENT, CONTINUING DISCLOSURE POLICY, PRELIMINARY OFFICIAL STATEMENT, OFFICIAL STATEMENT AND REGISTRAR AGREEMENT; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH NOTES; DESIGNATING A REGISTRAR, TRUSTEE AND PAYING AGENT; MAKING OTHER PROVISIONS AS TO THE NOTES; APPROVING AND AUTHORIZING PAYMENT OF INVOICES;

WHEREAS, the city council (the "Governing Body") of the City of Nitro (the "Issuer") has duly and officially adopted a Bond and Note Ordinance on October 20, 2015, effective November 17, 2015 (the "Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING SEWERAGE SYSTEM OF THE CITY OF NITRO; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$10,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, FROM TIME TO TIME IN ONE OR MORE SERIES AS DESIGNATED IN SUPPLEMENTAL RESOLUTIONS, OF THE CITY OF NITRO, THE PROCEEDS OF WHICH, SHALL BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF NITRO WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO PERMANENTLY FINANCE THE COST OF SUCH DESIGN, ACQUISITION AND CONSTRUCTION, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$9,000,000 IN



AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM BOND ANTICIPATION NOTES, TO TEMPORARILY FINANCE A PORTION OF THE COST OF SUCH DESIGN, ACQUISITION AND CONSTRUCTION; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AND ADOPTING OTHER PROVISIONS RELATED THERETO.

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

WHEREAS, the Ordinance provides for the issuance of the Sewerage System Bond Anticipation Notes, Series 2015 (the "Notes"), of the Issuer, in the aggregate principal amount of not more than \$9,000,000, all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"); and in the Ordinance it is provided that the exact principal amount, date, maturity date, interest rate, interest and principal payment dates, redemption provision and other terms of the Notes should be established by a Supplemental Resolution thereto and that other matters relating to the Notes be therein provided for;

WHEREAS, the Notes are proposed to be purchased by the Crews & Associates, Inc. (the "Original Purchaser");

WHEREAS, the Notes are proposed to be purchased pursuant to a Notes Purchase Agreement between the Original Purchaser and the Issuer, to be dated the date of execution thereof and in general form attached hereto and incorporated herein by reference (the "Purchase Agreement");

WHEREAS, in order to issue the Notes it is necessary to appoint a Registrar, Paying Agent and Trustee, and approve a Notes Purchase Agreement, a Continuing Disclosure Agreement, an Indenture, a Registrar Agreement, a Preliminary Official Statement and an Official Statement and other matters pertaining to the Notes;

WHEREAS, the Governing Body has determined that the Mayor shall be empowered and authorized to execute the Purchase Agreement, within the parameters set forth herein, at such time as such person shall determine most advantageous to the District; and

WHEREAS, the Governing Body deems it essential and desirable that this Resolution be adopted, that the Purchase Agreement, the Continuing Disclosure Agreement, the Indenture and the Registrar Agreement hereinafter provided for be entered into by the Issuer, that the Official Statement relating to the Notes, hereinafter described, be approved, that the Issuer's Mayor be authorized to enter into the Purchase Agreement within the parameters hereby approved by the Governing Body, and that other matters relating to the Notes be herein provided for all in accordance with the Ordinance.

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

Section 1. A. Pursuant to the Ordinance and the Act, this Notes Supplemental Parameters Resolution is adopted and there are hereby authorized and ordered to be issued the Notes. The Notes shall be issued in the aggregate principal amount not to exceed \$7,000,000, bear interest at a rate not to exceed 3%, payable semiannually on each January 1 and July 1, commencing July 1, 2016, as determined by the Certificate of Determinations and shall mature no later than January 1, 2019, all as shall subsequently be approved by the Mayor pursuant to the execution and delivery by the Mayor of a Certificate of Determinations with respect to the Notes, dated the date of the Notes Purchase Agreement, the form of which is attached hereto as EXHIBIT A and approved hereby (the "Notes Certificate of Determinations"); provided however, that the specific terms of the Notes shall be as determined by the Mayor at the time of the execution of the Note Purchase Agreement and as approved by the Mayor in the Certificate of Determinations.

B. Proceeds of the Notes shall be deposited in the Notes Construction Trust Fund created in the Indenture and applied to the costs of the Project and the costs of issuance of the Notes. The Utility Board is hereby authorized to review and approve the costs of the Project.

C. The principal of the Notes shall be payable in lawful money of the United States of America at the address of the Noteholder set forth in the Note Register, with the final payment to be made only upon delivery of the Notes to the Registrar for cancellation. Payment of interest on any Notes shall be made on each Interest Payment Date to the Noteholder at the close of business on the Regular Record Date for such Interest Payment Date by check or draft mailed to the person who is the registered owner of such Notes and at the address appearing on the Note Register at the close of business on the Regular Record Date pertaining to such Interest Payment Date, or at the option of any Registered Owner of \$1,000,000 or more of the Series 2015 Notes, by wire transfer to a domestic bank account specified in writing at least 5 days prior to the Record Date by such Registered Owner. If and to the extent the Issuer shall default in the payment or provision for payment of interest on any Notes on any Interest Payment Date, such interest in default shall cease to be payable to the person who was the registered owner of such Notes as of the Regular Record Date. Whenever moneys become available for the payment of such defaulted interest, the Registrar shall establish a Special Record Date for the payment of such defaulted interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment, and the Registrar shall cause notice of the proposed payment and of such Special Record Date to be mailed by first class mail, postage prepaid, to the Noteholder at its address as it appears on the Note Register not less than 10 days prior to such Special Record Date. Such notice having been so mailed, the defaulted interest shall be payable to the persons who are the registered owners of the Notes (or their respective predecessor Notes) at the close of business on such Special Record Date.

D. The Notes are to be paid from the proceeds of bonds to be issued, from time to time, to the Authority at the direction of the DEP. The Issuer commits to take all actions necessary to issue the bonds, from time to time, to timely provide funds to pay the Notes as they become due and payable. In the event that funds are not available from the Authority through the CWSRF to purchase the bonds, the Issuer commits to issue bonds to another lender to provide funds to pay the Notes. The Issuer hereby commits that it will not issue any bonds

payable from the Net Revenue of the System, except for the bonds to pay the Notes, until the Notes are paid in full.

Section 2. The Notes Purchase Agreement by and between the Original Purchaser and the Issuer, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved, and directed. The Mayor shall execute and deliver the Notes Purchase Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Notes Purchase Agreement by the Mayor shall be conclusive evidence of any approval required by this Section, and authorization of any action required by the Note Purchase Agreement relating to the issuance and sale of the Notes, including the payment of all necessary fees and expenses in connection therewith.

Section 3. A. The Notes shall be secured by a trust indenture (the "Indenture") to be entered into between the Issuer and The Huntington National Bank, as Trustee, the form of which is attached hereto as EXHIBIT B and approved hereby. The Mayor shall execute and deliver the Indenture with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Indenture by the Mayor shall be conclusive evidence of any approval required by this Section.

B. The Trustee is hereby authorized to pay the Costs of Issuance of the Notes from the Costs of Issuance Fund created under the Indenture. The Mayor is hereby authorized to submit a requisition to the Trustee evidencing the Costs of Issuance.

Section 4. A. The Tax Certificate, to be dated the date of execution and delivery of the Notes (the "Tax Certificate"), and executed and delivered by the Issuer, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Tax Certificate with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Tax Certificate by the Mayor shall be conclusive evidence of any approval required by this Section.

B. The Tax Compliance Policy adopted on September 17, 2013, is hereby replaced by the Tax Compliance Policy attached hereto as EXHIBIT C and incorporated herein by reference. The Issuer hereby approves the replacement Tax Compliance Policy.

Section 5. A. The Continuing Disclosure Agreement, to be dated the date of execution and delivery of the Notes (the "Disclosure Agreement"), by and between the Issuer and the Dissemination Agent named therein, substantially in the form included in the Official Statement to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Disclosure Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Disclosure Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

B. The Issuer hereby approves the Continuing Disclosure Policy attached hereto as EXHIBIT D and incorporated herein by reference.

Section 6. The distribution by the Original Purchaser of a preliminary official statement (the “Preliminary Official Statement”) attached hereto as EXHIBIT E and (which is a “deemed final” official statement in accordance with SEC Rule 15c2-12), substantially in the form submitted to this meeting is hereby ratified and approved. The certificate of the Issuer relating to compliance with SEC Rule 15c2-12 and the execution and delivery thereof by the Mayor is hereby approved. The official statement (the “Official Statement”) to be substantially in the form of the Preliminary Official Statement, (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the Mayor) and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The Mayor shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved. The execution of the Official Statement by the Mayor shall be conclusive evidence of any approval required by this Section.

Section 7. The Registrar Agreement by and between the Issuer and the Registrar designated herein, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Registrar Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Registrar Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

Section 8. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia, as the Paying Agent for the Notes.

Section 9. The Issuer hereby appoints and designates The Huntington National Bank, Charleston, West Virginia, as the Trustee and Registrar for the Notes.

Section 10. 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 Notes to the end that the Notes may be delivered on a timely basis to the Original Purchaser pursuant to the Purchase Agreement, including a DTC Letter of Representations. The Mayor is hereby authorized to execute the DTC Blanket Letter of Representations and file it with the DTC.

Section 11. The notice addresses for the Paying Agent, Trustee, Registrar and Original Purchaser shall be as follows:

PAYING AGENT  
West Virginia Municipal Bond Commission  
900 Pennsylvania Avenue, Suite 1117  
Charleston, West Virginia 25301  
Attention: Executive Director

TRUSTEE AND REGISTRAR  
The Huntington National Bank  
525 Vine Street, 14<sup>th</sup> Floor  
Cincinnati, OH 45202  
ATTN: Corporate Trust Department

ORIGINAL PURCHASER  
Crews & Associates, Inc.  
300 Summers Street, Suite 930  
Charleston, West Virginia 25301-1631

Section 12. The issuance of the Notes 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 13. The Issuer hereby covenants and agrees that it will not permit at any time or times any of the proceeds of the Notes or any other funds of the Issuer to be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any of the Notes to be an “arbitrage bond” as defined in Section 148 of the Code, and the regulations promulgated pursuant thereto. The Mayor of the Issuer is authorized and directed to execute and deliver such further instruments or agreements as shall be required to provide further assurances of the Issuer's compliance with this covenant.

Section 14. The Issuer hereby designates the Notes as “qualified tax-exempt obligations” for purposes of Section 265(b)(3)(B) of the Code and covenants that the Notes do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income tax purposes (excluding, however, obligations issued to currently refund any obligation of the Issuer to the extent the amount of the refunding obligation does not exceed the amount of the refunded obligation and private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code), have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 2015, all as determined in accordance with the Code.

Section 15. The Mayor and Recorder, and all other appropriate officers and employees of the Issuer are hereby authorized, empowered and directed to do any and all things proper and necessary to cause the Notes to be duly and properly issued by the Issuer and delivered to the Original Purchaser as herein authorized and to otherwise facilitate the transaction contemplated by this Notes Supplemental Parameters Resolution, and no further authority shall be necessary to authorize any such officers or employees to give such further assurance and do such further acts as may be legally required.

Adopted this 17<sup>th</sup> day of November, 2015.

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Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the City of Nitro on the 17<sup>th</sup> day of November, 2015.

Dated: December 3, 2015.

[SEAL]

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Recorder

**EXHIBIT A**

**City of Nitro  
Sewerage System Bond Anticipation Notes, Series 2015**

**CERTIFICATE OF DETERMINATIONS**

The undersigned, \_\_\_\_\_, Mayor of the City of Nitro (the "Issuer"), in accordance with the Notes Supplemental Parameters Resolution adopted by the City Council of the Issuer on November 17, 2015 (the "Supplemental Parameters Resolution"), with respect to the Issuer's Sewerage System Bond Anticipation Notes, Series 2015 (the "Notes"), hereby finds and determines as follows:

1. The Notes shall be dated December \_\_, 2015 and shall bear interest payable on January 1 and July 1 of each year commencing July 1, 2016.

2. The Notes shall be issued in the aggregate principal amount of \$\_\_\_\_\_, at a true interest cost of \_\_\_\_%. Such interest rates do not exceed 3.00%, being the maximum interest rate authorized by the Supplemental Parameters Resolution.

3. The Notes shall mature in the amounts and on the dates set forth on Schedule 1 attached hereto and incorporated herein.

4. The Notes shall bear interest at the rates and produce the yields set forth on Schedule 1 attached hereto and incorporated herein.

5. The Notes shall be sold to Crews & Associates, Inc., Charleston, West Virginia (the "Underwriter"), pursuant to the terms of the Notes Purchase Agreement by and between the Underwriter and the Issuer, the final form of which is hereby approved, at an aggregate purchase price of \$\_\_\_\_\_ (representing par value less an Underwriter's discount of \$\_\_\_\_\_ and [a net original issue premium of \$\_\_\_\_\_]), (the "Closing Date").

6. The forms of the Official Statement, the Continuing Disclosure Agreement, Indenture and the Registrar Agreement attached hereto under Exhibit A are hereby approved.

The undersigned hereby certifies that the foregoing terms and conditions of the Notes are within the parameters prescribed by the Supplemental Parameters Resolution, and the Notes may be issued with such terms and conditions as authorized by the Supplemental Parameters Resolution.



WITNESS my signature this \_\_ day of November, 2015.

CITY OF NITRO

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

Schedule 1

Maturity Schedule

SERIES 2015 NOTE TERMS

Note No.	Maturity Date	Principal Amount	Interest Rate	Price or Yield
NR-1	1/1/2017	\$2,000,000		
NR-2	1/1/2018	\$2,000,000		
NR-3	1/1/2019	\$ _____ *		

\*Estimate, subject to change.

**EXHIBIT B**

**TRUST INDENTURE**

## **EXHIBIT C**

### **TAX COMPLIANCE POLICY**

#### **City of Nitro, West Virginia Post-Issuance Tax Compliance Procedures For Tax-Exempt Bonds**

**November 17, 2015**

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt bonds (the “Bonds”) issued by the City of Nitro, West Virginia (the “City”) so as to maximize the likelihood that all applicable post-issuance requirements of the applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations promulgated thereunder (“Treasury Regulations”) needed to preserve the tax-exempt status of the Bonds are met. This Policy establishes a permanent, ongoing structure of practices and procedures that will facilitate compliance with the requirements to maintain the tax-exempt status of individual debt obligations.

The City reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The City also reserves the right to change these policies and procedures from time to time.

#### **General**

Inasmuch as the City is an issuer of Bonds (including refunding Bonds) for governmental purposes or is a responsible conduit issuer authorizing the issuance of 501(c)(3) Bonds or Bonds (including refunding Bonds) for certain “exempt facilities” (e.g., solid waste disposal facilities, sewage facilities, water furnishing facilities, etc.), the City now identifies post-issuance tax compliance procedures for all Bonds authorized by the City. These post-issuance tax compliance procedures set forth the procedures for the City for all Bonds issued by the City and, in the case of Bonds for which the City is a conduit issuer, the City’s requirements of all entities receiving the benefit of the Bond issue (whether through a loan, a lease or otherwise, the “Borrower”), concerning these procedures. All Borrowers shall cause satisfactory policies and procedures to be put in place. Attachment A provides a sample of what the City deems satisfactory.

#### **Post-Issuance Compliance Requirements**

##### **External Advisors / Documentation**

The City and the Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status. Those requirements and procedures shall be documented in the tax certificate or tax regulatory agreement (the “Tax Certificate”) and/or other documents finalized at or before issuance of the Bonds. Those requirements and procedures shall include future compliance with

applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds.

The City and the Borrower also shall engage bond counsel and other legal counsel and advisors, as needed, for consultation following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with any potential changes in use of Bond-financed or refinanced assets.

When necessary, the City shall engage and shall encourage or require any Borrower to engage expert advisors (each a "Rebate Service Provider") to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds in the manner more fully set forth in the Model Borrower Procedures (Attachment A hereto).

Unless otherwise provided by the indenture relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or other financial institution, and the investment of Bond proceeds shall be managed by the City or, in the event the City is the conduit issuer of the Bonds, the Borrower. The City or, in the event the City is the conduit issuer of the Bonds, the Borrower shall prepare (or cause the trustee to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statement shall be delivered to the City if it so requests.

#### Compliance Officer

The [Clerk] [Treasurer] [Business Manager] [Finance Director][Administrator] (the "Compliance Officer") shall be responsible for monitoring post-issuance compliance issues. The Compliance Officer will coordinate procedures for record retention and review of such records. All documents and other records relating to tax-exempt obligation issued by the City shall be maintained by or at the direction of the Compliance Officer. In maintaining such documents and records, the Compliance Officer will comply with applicable Internal Revenue Service ("IRS") requirements, such as those contained in Revenue Procedure 97-22.D. The Compliance Officer shall be aware of options for voluntary corrections for failure to comply with post-issuance compliance requirements (such as remedial actions under Section 1.141-12 of the Regulations and the Treasury's Tax-Exempt Bonds Voluntary Closing Agreement Program) and take such corrective action when necessary and appropriate. The Compliance Officer will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.

The City or, in the event the City is the conduit issuer of the Bonds, the Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to undertake the tasks listed above. The City shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

All relevant records and contracts shall be maintained as described below.

### Arbitrage Rebate and Yield

The City or, in the event the City is a conduit issuer of the Bonds, the Borrower shall be responsible for compliance with all requirements under Federal arbitrage regulations. The City or, as more fully set forth in the Model Borrower Procedures, if applicable, the Borrower is responsible for the following:

A. Determining the likelihood of complying with an arbitrage rebate exemption;

B. If necessary, (i) engaging the services of a Rebate Service Provider, (ii) prior to each rebate calculation date, causing the trustee to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider, and (iii) if necessary, contributing, or causing the trustee to contribute any required annual payments into any rebate fund;

C. Providing to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;

D. Monitoring efforts of the Rebate Service Provider;

E. Assuring payment of required rebate mounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed or matures;

F. During the construction period of each capital project financed in whole or in part by Bonds, monitoring the investment and expenditure of Bond proceeds and consulting with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months or 18 months, as applicable, following the issue date of the Bonds; and

G. Retaining copies of all arbitrage reports and trustee statements as described below under "Record Keeping Requirements" and, upon request, providing such copies to the City.

The City or, in the event the City is the conduit issuer of the Bonds, the Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to undertake the tasks listed above. The Borrower shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

For the Purposes of Complying with the Code's arbitrage restrictions, the Compliance Officer will:

A. Confirm that a certification of the initial offering prices of the tax-exempt obligations with such supporting data, if any, required by bond counsel, is included in the closing documents for the issue.

B. Confirm that a computation of the yield on such issue from the Issuer's financial advisor or bond counsel (or an outside arbitrage rebate specialist) is contained in the closing documents.

C. Coordinate the tracking of expenditures, including the expenditure of any investment earnings. If the project(s) to be financed with the proceeds of tax-exempt obligations will be funded with multiple sources of funds, confirm that the Issuer has adopted an accounting methodology that maintains each source of financing separately and monitors the actual expenditure of proceeds of such tax-exempt obligations.

D. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures. This procedure shall include an examination of the expenditures made with proceeds of the tax-exempt obligations within 18 months after each project financed by tax-exempt obligations is placed in service and, if necessary, a reallocation of expenditures in accordance with Section 1.148-6(d) of the Treasury Regulations.

E. Monitor compliance with the applicable “temporary period” (as defined in the Code and Treasury Regulations) exceptions for the expenditure of proceeds of the issue, and provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.

F. Ensure that investments acquired with proceeds of such issue are purchased at fair market value. In determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used.

G. Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.

H. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.

I. Identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.

J. Monitor compliance with six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.

K. Procure a timely computation of any rebate liability and, if rebate is due, to file a Form 8038-T and to arrange for payment of such rebate liability.

L. Arrange for timely computation and payment of “yield reduction payments” (as such term is defined in the Code and Treasury Regulations), if applicable.

#### Use of Bond Proceeds and Bond-Financed or Refinanced Assets

The City or, in the event the City is a conduit issuer of the Bonds, the Borrower shall be responsible for monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of

the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

A. Maintaining records identifying the assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before bond issuance), including a final allocation of Bond proceeds as described below under “Record Keeping Requirements”;

B. Consulting with bond counsel and other legal counsel and advisers in the review of any change in use of Bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

C. Conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

D. To the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified Bonds, if such counsel advises that a remedial action is necessary;

E. When required, to the extent that Bond proceeds were used to acquire an existing building, confirming that qualified rehabilitation expenditures in an amount equal to at least 15% of the amount of such proceeds were made no later than 24 months after the later of (1) the date of issuance of the Bonds, or (2) the date of acquisition of the building;

F. When required, confirming that less than 25% of Bond proceeds were used to acquire land;

G. With respect to facilities that dispose of solid waste by reconstituting, converting or otherwise recycling it into material that is not waste, determining annually whether solid waste (as identified or described at the time of issuance of the Bonds) constitutes at least 65%, by weight or volume, of the total materials introduced into the reconstituting, converting or recycling process. This provision is subject to amendment or deletion depending on the content of any new regulations promulgated by the United States Treasury regarding the definition of solid-waste disposal facilities; and

H. With respect to other types of exempt facilities, adopting any such procedures that bond counsel deems appropriate to periodically assess whether such facility continues to qualify as an exempt facility.

### **Private Activity Concerns**

The following polices relate to the monitoring and tracking of private uses and private payments with respect to facilities financed with the Obligations. The Compliance Officer will:



A. Maintain records determining and tracking facilities financed with tax-exempt obligations and the amount of proceeds spent on each facility.

B. Maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of an issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.

C. Monitor private use of financed facilities to ensure compliance with applicable limitations on such use. Examples of potential private use include:

1. Sale of the facilities, including sale of capacity rights;
2. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;
3. Management contracts (in which the Issuer authorizes a third party to operate a facility, e.g., cafeteria) and research contracts;
4. Preference arrangements (in which the Issuer permits a third party preference, such as parking in a public parking lot);
5. Output contracts or other contracts for use of utility facilities (including contracts with large utility users);
6. Development agreements which provide for guaranteed payments or property values from a develop

#### Record Keeping Requirement

The City or, in the event the City is a conduit issuer of the Bonds, the Borrower shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least 3 years:

A. A copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Bonds;

B. A copy of all material documents relating to capital expenditures financed or refinanced by Bond process, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds and the final completion report filed pursuant to the loan agreement, lease or similar document; and

C. A copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statement, in connection with any investment agreements, and copies of all bidding documents, if any.

The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to retain the records listed above. The Borrower shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

Reissuance

The Compliance Officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance for federal tax purposes.

## Attachment A

### **SAMPLE City of Nitro, West Virginia Borrower Post-Issuance Tax Compliance Procedures For Tax-Exempt Bonds**

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt bonds (the "Bonds") issued on behalf of \_\_\_\_\_ (the "Borrower") so as to maximize the likelihood that all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds are met. The Borrower reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant provided, any exceptions to these procedures shall not be made without engaging bond counsel or other legal counsel for consultation for a determination that such exception would not cause the Bonds to lose their tax-exempt status and notification to the City of such exception. The Borrower also reserves the right to change these policies and procedures from time to time. The Borrower shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

#### **General**

The Borrower now identifies post-issuance tax compliance procedures for all Bonds issued on its behalf.

#### **Post-Issuance Compliance Requirements**

##### External Advisors / Documentation

The Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status. The Borrower also shall engage bond counsel and other legal counsel and advisors, as needed, for consultation following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with any potential changes in use of Bond-financed or refinanced assets.

The Borrower shall be responsible for determining (or obtain expert advice to determine) whether arbitrage rebate calculations have to be made for the Bond issue. If it is determined that such calculations are or are likely to be required, the Borrower shall engage expert advisors (each a "Rebate Service Provider") to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds, or else shall ensure that it has adequate financial, accounting and legal resources of its own to make such calculations, Borrower shall make any rebate payments required on a timely basis.

Unless otherwise provided by the indenture relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or other financial institution, and the investment of Bond proceeds shall be managed by the Borrower. The Borrower shall prepare (or cause the trustee or other financial institution to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statements shall be delivered to the bond issuer if it so requests.

#### Arbitrage Rebate and Yield

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for overseeing compliance with arbitrage rebate requirements under federal tax regulations:

1) If at the time of Bond Issuance, based on reasonable expectations set forth in the Tax Certificate or Tax Regulatory Agreement (the "Tax Certificate"), it appears likely that the Bond issue will qualify for an exemption from the rebate requirement, the Borrower may defer taking any of the actions set forth in the subsection (2). Not later than the time of completion of construction or acquisition of the Bond-financed project, and depletion of all funds from the project fund, the Borrower shall make a determination if expenditure of the Bond proceeds qualified for exemption from the rebate requirements based on spending within a 6-month or 18-month period after issuance. If rebate exemption is determined to be applicable, Borrower shall prepare and keep in the permanent records of the Bond issue a memorandum evidencing this conclusion together with records of expenditure to support such conclusion. If the transaction does not qualify for rebate exemption, Borrower shall initiate the steps set forth in (2) below.

2) If at the time of Bond issuance it appears likely that arbitrage rebate calculations will be required, or upon determination that calculations are required pursuant to (1) above, Borrower shall:

- if necessary, (i) engage the services of a Rebate Service Provider, (ii) prior to each rebate calculation date, cause the trustee or other financial institution investing bond proceeds to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider, and (iii) if necessary, contributing, or causing the trustee to contribute any required annual payments into any rebate fund;
- provide to the Rebate Service Provider additional documents and information reasonable requested by the Rebate Service Provider;
- monitor efforts of the Rebate Service Provider;
- assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed or matures;

- during the construction period of each capital project financed in whole or in part by Bonds, monitor the investment and expenditure of Bond proceeds and consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months, as applicable, following the issue date of the Bonds;
- retain copies of all arbitrage reports and trustee statements as described below under “Record Keeping Requirements” and, upon request, providing such copies to the Bond issuer; and
- in lieu of engaging an outside Rebate Service Provider, the Borrower may make a determination that it has sufficient capabilities using its own personnel, supported by its regular accounting and legal advisers, to be able to make the required rebate calculations. Such determination shall be evidenced in writing with specific reference to the personnel and advisers to carry out the calculations, and such written determination shall be maintained in the records of the Bond transaction.

Use of Bond Proceeds and Bond-Financed or Refinanced Assets:

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for:

- monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before Bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before Bond issuance), including a final allocation of Bond proceeds as described below under “Record Keeping Requirements”;
- consulting at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- to the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced

assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified Bonds, if such counsel advises that a remedial action is necessary;

- when required, to the extent that Bond proceeds were used to acquire an existing building, confirming that qualified rehabilitation expenditures in an amount equal to at least 15% of the amount of such proceeds were made no later than 24 months after the later of (1) the date of issuance of the Bonds, or (2) the date of acquisition of the building;
- when required, confirming that less than 25% of Bond proceeds were used to acquire land; and
- [with respect to facilities that dispose of solid waste by reconstituting, converting or otherwise recycling it into material that is not waste, determining annually whether solid waste (as identified or described at the time of issuance of the Bonds) constitutes at least 65%, by weight or volume, of the total materials introduced into the reconstituting, converting or recycling process. This provision is subject to amendment or deletion depending on the content of any new regulations promulgated by the United States Treasury regarding the definition of solid-waste disposal facilities;]

All relevant records and contracts shall be maintained as described below.

#### Record Keeping Requirement

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least 3 years:

- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Bonds;
- a copy of all material documents relating to capital expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds and the Final Completion Report filed pursuant to the Loan Agreement; and
- a copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any.

DATED: \_\_\_\_\_

[BORROWER]

By \_\_\_\_\_  
[Title]

**EXHIBIT D**

**CONTINUING DISCLOSURE POLICY**

**CITY OF NITRO, WEST VIRGINIA  
CONTINUING DISCLOSURE COMPLIANCE PROCEDURES**

ARTICLE I	–	DEFINITIONS AND RULES OF CONSTRUCTION.....	1
Section 1.		Definitions.....	1
Section 2.		Rules of Construction.....	3
ARTICLE II	–	GENERAL PRINCIPLES.....	3
ARTICLE III	–	DISCLOSURE MANAGER AND DISCLOSURE COORDINATOR.....	3
Section 1.		Appointment of Disclosure Manager.....	3
Section 2.		Duties of the Disclosure Manager.....	3
Section 3.		Appointment of Disclosure Coordinator.....	4
Section 4.		Duties of the Disclosure Coordinator.....	4
ARTICLE IV	–	LISTED EVENTS REQUIREMENTS.....	5
Section 1.		General.....	5
Section 2.		Listed Events for Bonds Issued Prior to December 1, 2010.....	5
Section 3.		Listed Events for Bonds Issued on and after December 1, 2010.....	5
ARTICLE V	–	ANNUAL REPORT REQUIREMENTS.....	6
ARTICLE VI	–	FILING AND NOTICE REQUIREMENTS.....	7
Section 1.		Annual Reports and Event Notices.....	7
Section 2.		Required Notices.....	7
ARTICLE VII	–	VOLUNTARY DISCLOSURES.....	7
ARTICLE VIII	–	DOCUMENT RETENTION POLICY.....	7
Exhibit A:		Rule 15c2-12 (As Amended).....	A-1
Exhibit B:		City and Outstanding Debt.....	B-1
Exhibit C:		Rating History for City Outstanding Debt.....	C-1
Exhibit D:		Required Information for Annual Reports for City.....	D-1
Exhibit E:		Required Notices.....	E-1



## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

#### Section 1. Definitions.

The following capitalized terms shall have the following meanings in these Procedures:

“Annual Report” shall mean any annual report to be filed by the City in connection with its obligations under any Continuing Disclosure Certificate executed in accordance with Rule 15c2-12 under the Securities Exchange Act of 1934.

“City” shall mean the City of Nitro, West Virginia, its successors and assigns.

“City Counsel” shall mean the counsel appointed to serve the City.

“Bonds” shall mean any bonds, certificates of participation, notes or any other evidence of indebtedness issued by or on behalf of the City which is subject to Rule 15c2-12 as listed on Exhibit B attached hereto.

“Bond Insurer” shall mean an issuer of a financial guaranty insurance or municipal bond insurance policy guaranteeing the scheduled payment of principal of and interest on an outstanding issue of Bonds when due.

“Continuing Disclosure Certificate” shall mean each continuing disclosure certificate, undertaking or agreement executed and delivered by the City in connection with an issue of Bonds.

“Credit Facility Provider” shall mean a bank providing a direct-pay letter of credit or other security or liquidity instrument in connection with an issue of Bonds which secures the payment of the principal or purchase price, if any, of and interest on an outstanding issue of Bonds when due.

“Disclosure Coordinator” shall mean the person or persons designated by the Disclosure Manager to assist him in taking such action necessary or desirable to comply with the terms of the Continuing Disclosure Certificates, as provided in Article III hereof.

“Disclosure Counsel” shall mean a firm of nationally recognized standing in matters pertaining to the disclosure obligations under Rule 15c2-12 of the Securities and Exchange Commission of the United States of America, duly admitted to the practice of law before the highest court of any state of the United States of America.

“Disclosure Manager” shall mean the person appointed by the City who is responsible for compliance with the terms of the Continuing Disclosure Certificates, as provided in Article III.

“EMMA” shall mean the MSRB’s Electronic Municipal Market Access system or any other successor thereto as designated by the SEC or the MSRB.

“Event Notice” shall mean any notice of the occurrence of a Material Event or Listed Event.

“Listed Event” shall mean any event described in Section 3 of Article IV hereof.

“Material Event” shall mean any event described in Section 2 of Article IV hereof.

“MSRB” shall mean Municipal Securities Rulemaking Board.

“Official Statement” shall mean any Preliminary Official Statement, final Official Statement or any other disclosure document that the City prepared in connection with the issuance and sale of any Bonds.

“Paying Agent” shall mean shall mean any bank, trust company, banking association or financial institution appointed to perform the functions of a paying agent for an issue of Bonds.

“Procedures” shall mean these Continuing Disclosure Procedures.

“Rating Agency” shall mean each of Moody’s Investor’s Service, Standard & Poor’s Rating Services, a Standard & Poor’s Financial Services LLC business, and Fitch Ratings Inc.

“Rule 15c2-12” shall mean Rule 15c2-12(b)(5) adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

“Trustee” shall mean the bank, trust company, national banking association or other financial institution appointed as a trustee for an issue of Bonds.

Section 2. **Rules of Construction.** The singular form of any word used herein, including the terms defined in this Section II, shall mean and include the plural number and vice versa, unless the context otherwise requires. Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders. The headings or titles of the several Articles and Sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof. The Material Events listed in Section 2 of Article IV hereof and the Listed Events listed in Section 3 of Article IV hereof are referred to herein as “Listed Events”. Each Exhibit shall be amended or supplemented from time to time as Bonds mature or are redeemed and as Bonds that are subject to Rule 15c2-12 are issued. Reference to each Exhibit hereto shall refer to such Exhibit as it may be so amended and supplemented.

## ARTICLE II

### GENERAL PRINCIPLES

The City is committed to complete and accurate market disclosure in accordance with the disclosure requirements under the federal securities laws, including rules and regulations promulgated by the SEC and the MSRB, as those rules may be amended from time to time. These Procedures are approved by the City in order to achieve this objective and, in accordance therewith, may be amended and supplemented by the City from time to time. These Procedures shall be revised from time to time as necessary or desirable as Bonds mature or are redeemed and as Bonds that are subject to Rule 15c2-12 are issued.

## ARTICLE III

### DISCLOSURE MANAGER AND DISCLOSURE COORDINATOR

Section 1. **Appointment of Disclosure Manager.** The City shall appoint a Disclosure Manager to fulfill the duties set forth in Section 2 of this Article III.

Section 2. **Duties of the Disclosure Manager.**

The Disclosure Manager shall:

- (i) monitor and maintain compliance by the City with its respective Continuing Disclosure Certificates and these Procedures;
- (ii) serve as the main contact for each Disclosure Coordinator to communicate issues and information that may be included in an Event Notice or an Annual Report;
- (iii) review all proposed Listed Event Notices, Annual Reports and other filings with the EMMA system and filings for Bond Insurers, Credit Facility Providers, Paying Agents, Rating Agencies, and Trustees;
- (iv) confer with City Counsel and Disclosure Counsel regarding the City's continuing disclosure undertakings and procedures;
- (v) maintain the lists attached as Exhibits B, C, D, E and F;
- (vi) direct the Disclosure Coordinator to file any required documents; and
- (vii) take such other action as may be necessary or useful to achieve the objectives of these Procedures and to comply with all applicable federal securities laws.

Section 3. **Appointment of Disclosure Coordinator.**

The Disclosure Manager shall appoint one or more Disclosure Coordinators from time to time to fulfill the duties set forth in Section 4 of this Article III. The Disclosure Coordinators may work with other employees of the City in order to effectively comply with the objectives of these Procedures.

Section 4. **Duties of the Disclosure Coordinator.**

(A) The Disclosure Coordinator shall:

- (i) file any documents as directed by the Disclosure Manager;
- (ii) serve as a contact for City staff to communicate issues and information that may be included in an Event Notice or an Annual Report;
- (iii) maintain correspondence regarding possible Listed Events;
- (iv) keep informed regarding all of the City's public disclosures, including disclosures to the Bond Insurers, the Credit Facility Providers, the Rating Agencies, and the Trustees;
- (v) document the City's continuing disclosure filings by retaining the documents set forth in Article VIII hereof; and
- (vi) take such other action as may be necessary or useful to achieve the objectives of these Procedures and to comply with all applicable federal securities laws.

(B) In addition to the duties set forth above in clause (A), the Disclosure Coordinator shall review the list of Listed Events regularly to determine whether an event has occurred that may require a filing of an Event Notice. The Disclosure Coordinator shall regularly check the websites of and subscribe to communications (*e.g.*, news alerts, press releases, etc.) from each Rating Agency, Bond Insurer or Credit Facility Provider in order to be aware of any Rating Change as described in the Continuing Disclosure Certificates. The Disclosure Coordinator shall contact relevant City staff on a regular basis to

ascertain whether any events have occurred which would constitute Listed Events under the Continuing Disclosure Certificates.

## **ARTICLE IV**

### **LISTED EVENTS REQUIREMENTS**

#### **Section 1. General.**

The Continuing Disclosure Certificates entered into by the City with respect to Bonds issued prior to December 1, 2010 require Event Notices to be filed upon the occurrence of any event listed in Section 2 of Article IV hereof, if material. Any such Event Notice shall be filed "in a timely manner". The Continuing Disclosure Certificates entered into by the City with respect to Bonds issued on or after December 1, 2010 require Event Notices to be filed upon the occurrence of any event listed in Section 3 of Article IV hereof no later than 10 business days after the occurrence of such Listed Event.

#### **Section 2. Listed Events for Bonds Issued Prior to December 1, 2010.**

For Bonds issued prior to December 1, 2010, pursuant to the provisions of the applicable Continuing Disclosure Certificate, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the outstanding obligation, if material, in a timely manner:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on any credit enhancements reflecting financial difficulties;
- (v) substitution of any credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions or events affecting the tax-exempt status of the securities;
- (vii) modifications to the rights of security holders;
- (viii) bond calls;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the securities; and
- (xi) rating changes.

#### **Section 3. Listed Events for Bonds Issued on and after December 1, 2010.**

For Bonds issued on or after to December 1, 2010, pursuant to the provisions of the applicable Continuing Disclosure Certificate, the City shall give, or cause to be given, notice of the occurrence of any of the following Listed Events within ten (10) business days of the occurrence thereof:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;

- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (vii) modifications to rights of security holders, if material;
- (viii) bond calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the securities, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership or similar event of the obligated person (Note: For the purposes of this event, the event is considered to occur when any of the following occur: The appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental City has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental City, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental City having supervision or jurisdiction over substantially all of the assets or business of the obligated person);
- (xiii) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material.

## **ARTICLE V**

### **ANNUAL REPORT REQUIREMENTS**

Pursuant to the various Continuing Disclosure Certificates, the City must provide its respective Annual Report with respect to an issue of Bonds by the date set forth in Exhibit D attached hereto. The Disclosure Coordinator shall commence collection of information for each Annual Report at such time as he determines necessary or useful in order to timely complete and file the Annual Report. The Disclosure Coordinator shall obtain any information necessary to be included in an Annual Report that is not included in the City's audited financial statements. The Annual Report shall include the financial

information and other operating data set forth in the respective Continuing Disclosure Certificate as summarized in Exhibit D attached hereto.

In accordance with the Continuing Disclosure Certificates, if audited financial statements are not available by the date the Annual Report is required to be filed, unaudited financial statements are to be included in such Annual Reports and audited financial statements shall be filed when such statements become available. In addition, the Continuing Disclosure Certificates require the City to file a notice of any failure to provide its Annual Report, on or before the date specified in a Continuing Disclosure Certificate.

## ARTICLE VI

### FILING AND NOTICE REQUIREMENTS

Section 1. **Annual Reports and Event Notices.**

The Disclosure Manager shall file each Annual Report on such dates as provided in Exhibit D attached hereto and shall file each Event Notice as required pursuant to Article III hereof and the related Continuing Disclosure Certificate. The Disclosure Manager shall submit all filings of Annual Reports and Listed Events through EMMA or any other repository so designated by the MSRB or the SEC, unless the City is otherwise advised by a written opinion of Disclosure Counsel.

Section 2. **Required Notices.**

The Disclosure Manager shall file each notice required to be given to any Bond Insurer, Credit Facility Provider, Paying Agent, Rating Agency or Trustee as set forth in Exhibit E attached hereto.

## ARTICLE VII

### VOLUNTARY DISCLOSURES

The City's policy is to only file annual financial information and operating data and Event Notices that are required under the Continuing Disclosure Certificates and applicable federal securities laws. The Disclosure Manager may determine to file voluntary disclosure information that is not required under the Continuing Disclosure Certificates.

## ARTICLE VIII

### DOCUMENT RETENTION POLICY

In accordance with Article III hereof, the Disclosure Coordinator shall maintain the following materials for a period ending 6 years after the final maturity of an issue of Bonds:

- A. Continuing Disclosure Certificate;
- B. Annual Reports, including any EMMA transmittal letters and EMMA filing receipts;
- C. Event Notices, including any EMMA transmittal letters and EMMA filing receipts;
- D. Rating reports; and
- E. Such other information as the Disclosure Manager determines necessary or useful in accordance with the Continuing Disclosure Certificates.

**EXHIBIT A**  
**RULE 15c2-12**

**EXHIBIT B**  
**CITY OUTSTANDING DEBT**



**EXHIBIT C**  
**RATING HISTORY FOR CITY OUTSTANDING DEBT**

**EXHIBIT D**  
**REQUIRED INFORMATION FOR ANNUAL REPORTS FOR CITY OUTSTANDING DEBT**

**EXHIBIT E**  
**REQUIRED NOTICES**

**EXHIBIT E**

**PRELIMINARY OFFICIAL STATEMENT**

**NEW ISSUE - BOOK-ENTRY ONLY****NON-RATED**

*In the opinion of Jackson Kelly PLLC, Bond Counsel, under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, interest on the Series 2015 Notes (as defined herein) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and such interest will not be treated as a preference item for purposes of the alternative minimum tax imposed under the Code with respect to individuals and corporations. Under the Code, however, such interest is included in the adjusted current earnings of a corporation for purposes of computing the alternative minimum tax. In addition, in the opinion of Bond Counsel, under the Act (as defined herein), the Series 2015 Notes, and all interest and income thereon, shall be exempt from all taxation by the State of West Virginia (the "State") or any county, municipality, political subdivision or agency thereof. See "TAX MATTERS" herein.*

**\$6,735,000**

**CITY OF NITRO, WEST VIRGINIA  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015**

**Dated:** Date of Delivery**Due:** As shown on inside front cover

The Series 2015 Notes are issued in fully registered form in the denomination of \$5,000 principal amount or any integral multiple thereof. Purchasers of the Series 2015 Notes will not receive certificates representing their interests in the Series 2015 Notes purchased. The Series 2015 Notes will be registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York.

Interest on the Series 2015 Notes is payable on each January 1 and July 1, commencing July 1, 2016, with the final interest payment due on January 1, 2019 (each, an "Interest Payment Date"). Principal of the Series 2015 Notes is due on each January 1, as shown on the inside front cover page hereto (each a "Principal Payment Date"). Principal and interest on the Series 2015 Notes is payable by the West Virginia Municipal Bond Commission, as paying agent (the "Paying Agent") to Cede & Co.

The Series 2015 Notes are being issued by the City of Nitro, West Virginia (the "Issuer") to provide funds (i) to temporarily finance the costs of acquisition and construction of additions, betterments, extensions and improvements to the Issuer's sanitary sewer collection and treatment system (the "System"), specifically including, but not limited to, extension of service to approximately 94 new customers, rehabilitation of existing sewer lines, relining of a 42 inch transmission main and replacement of a belt press, along with all necessary appurtenances (collectively, the "Project"); and (ii) to pay costs of issuance of the Series 2015 Notes and related costs.

The payment of the principal of Series 2015 Notes will be secured with a sole first lien on the proceeds of the Issuer's sewer revenue bonds, issued in one or more series, to be purchased by the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Department of Environmental Protection Clean Water State Revolving Loan Fund (the "CWSRF") as more fully described herein. The Issuer has received a commitment letter from the CWSRF (the "CWSRF Commitment Letter") to purchase the sewer revenue bonds from the Issuer in the not to exceed amounts described herein (collectively, the "CWSRF Bonds").

The payment of interest on the Series 2015 Notes is secured by a sole first lien on the Surplus Revenues of the System and from funds on deposit in the sinking fund established therefor under the Ordinance, all as more fully described herein. The Net Revenues derived from the System secure the Prior Bonds (as hereinafter defined) and each series of the CWSRF Bonds, which lien on the Net Revenues is senior and prior to the lien on Surplus Revenues of the Series 2015 Notes.

The Issuer has designated the Series 2015 Notes as "qualified tax-exempt obligations" for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended. See "Tax Matters" for additional information.

The Series 2015 Notes do not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, and the Issuer shall not be obligated to pay the Series 2015 Notes or the interest thereon except from proceeds of the CWSRF Bonds, when issued, and the Surplus Revenues of the System. Neither the credit nor the taxing power of the Issuer shall be deemed to be pledged to, nor shall tax ever be levied for, the payment of the principal of or interest on the Series 2015 Notes.

This cover page contains only a brief description of the Issuer, the Series 2015 Notes and the security therefor. It is not intended to be a summary of material information with respect to the Series 2015 Notes. Investors should read the entire Official Statement, including the section titled "INVESTMENT CONSIDERATIONS," to obtain information necessary to make an informed investment decision.

The Series 2015 Notes are offered for delivery when, as and if issued and received by the Underwriter, subject to prior sale and to withdrawal or modification of the offering, without notice, and to the unqualified approval of legality by Jackson Kelly PLLC, Charleston, West Virginia, Bond Counsel, and the approval of certain matters by Steptoe & Johnson PLLC, Charleston, West Virginia, Counsel to the Underwriter. Certain legal matters will be passed upon for the Issuer by Johnnie Brown, Esquire, City Attorney. It is expected that the Series 2015 Notes will be available for delivery through The Depository Trust Company on or about December 3, 2015.

Dated: November 24, 2015



**\$6,735,000**  
**City of Nitro, West Virginia**  
**Sewerage System Bond Anticipation Notes, Series 2015**  
**MATURITIES, AMOUNTS AND INTEREST RATES**  
**Series 2015 Notes**

**Maturities, Amounts, Interest Rates, Prices & CUSIPS\*\***

<u>Maturity Date</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Price</u>	<u>Yield</u>	<u>CUSIP No.**</u>
01/01/2017	\$2,000,000	1.250%	100.00%	1.250%	654795 BH5
01/01/2018	2,000,000	1.750	100.00	1.750	654795 BJ1
01/01/2019	2,735,000	2.250	100.00	2.250	654795 BK8

\*\*CUSIP data on the [inside] cover page is provided by Standard & Poor's CUSIP Service Bureau, a division of the McGraw-Hill Companies, Inc. The CUSIP numbers on the cover page hereof are being provided solely for the convenience of the Holders of the Series 2015 Notes only at the time of issuance of the Series 2015 Notes, and none of the Issuer, the Utility Board (as defined herein) or the Underwriter make any representation with respect to such numbers or undertake any responsibility for their accuracy now or at any time in the future. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2015 Notes.

## **CITY OF NITRO, WEST VIRGINIA**

### **MAYOR**

Dave Casebolt

### **COUNCIL**

#### Council Members

John Montgomery

Brenda Tyler

Bill Javins

Al Walls

Bill Racer

Laurie Elkins

Andy Shamblin

City Recorder – Rita Cox

City Treasurer – John Young

### **UTILITY BOARD**

Dave Casebolt, Chairman

Rich Hively

Kim Painter

Harry Miller

Steve Boggs, P.E.

### **BOND COUNSEL**

Jackson Kelley PLLC

Charleston, West Virginia

### **COUNSEL TO CITY OF NITRO**

Johnnie Brown, Esquire

Charleston, West Virginia

### **UNDERWRITER**

Crews & Associates, Inc.

Charleston, West Virginia

### **UNDERWRITER'S COUNSEL**

Steptoe & Johnson PLLC

Charleston, West Virginia

### **REGISTRAR**

The Huntington National Bank

Cincinnati, Ohio

This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, and there shall not be any sale of the Series 2015 Notes in any jurisdiction in which it is unlawful to make such offer, solicitation or sale. No dealer, broker, salesman or other person has been authorized by the Issuer, the Utility Board or the Underwriter to give any information or to make any representations, other than as contained in this Official Statement. If given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. The information set forth herein has been obtained from the Issuer, the Utility Board and other sources, which are believed to be reliable, but is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Underwriter. The information and any expression of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the Issuer, the Utility Board or the System since the date hereof. This Official Statement is submitted in connection with the sale of securities referred to herein and may not be reproduced or used, in whole or in part, for any other purposes.

The information contained in this Official Statement has been obtained from the Issuer, the Utility Board and other sources believed to be reliable, but the accuracy or completeness of such information is not guaranteed by, and should not be construed as a promise by, any of the foregoing. The presentation of such information is intended to show recent historic information and is not intended to indicate future or continuing trends. No representation is made that the past experience, as shown by such financial and other information, will necessarily continue or be repeated in the future. This Official Statement contains, in part, estimates and matters of opinion, whether or not expressly stated to be such, which are not intended as statements or representations of fact or certainty, and no representation is made as to the correctness of such estimates and opinions, or that they will be realized. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Issuer, the Utility Board or the System.

The Series 2015 Notes shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the proceeds of the CWSRF Bonds, Surplus Revenues of the System, and from the funds on deposit in the Series 2015 Notes Payment Fund and the unexpended proceeds of the Series 2015 Notes, all as herein provided. No Holder or Holders of the Series 2015 Notes shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2015 Notes or the interest thereon.

#### **Forward-Looking Statements**

**This Official Statement contains statements relating to future results that are “forward-looking statements” as defined in the Private Securities Litigation Reform Act of 1995. When used in this Official Statement, the words “estimated,” “forecasted,” “intended,” “expected,” “anticipated,” “projected,” “assumed” and similar expressions identify forward-looking statements. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material. For a discussion of certain of such risks and possible variations in results, see the information under “INVESTMENT CONSIDERATIONS.”**

YOU SHOULD MAKE YOUR OWN DECISION WHETHER THIS OFFERING MEETS YOUR INVESTMENT OBJECTIVES AND RISK TOLERANCE LEVEL. NO FEDERAL OR STATE SECURITIES COMMISSION HAS APPROVED, DISAPPROVED, ENDORSED OR RECOMMEND THIS OFFERING. NO INDEPENDENT PERSON HAS CONFIRMED THE ACCURACY OR TRUTHFULNESS OF THIS DISCLOSURE, NOR WHETHER IT IS COMPLETE.



The Ordinance has not been qualified under the Trust Indenture Act of 1939, as amended because of available exemptions therefrom.

The following sentence has been provided by the Underwriter for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as a part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

The Series 2015 Notes will not be registered under the Securities Act of 1933, as amended, or any state securities law, and will not be listed on any stock or other securities exchange. Neither the Securities and Exchange Commission nor any other federal, state or other governmental entity or agency has determined or confirmed the accuracy of this Official Statement.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2015 NOTES AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

## TABLE OF CONTENTS

INTRODUCTION .....	1
PURPOSE AND PLAN OF FINANCING.....	3
THE SERIES 2015 NOTES.....	3
BOOK-ENTRY ONLY SYSTEM.....	4
SECURITY FOR THE SERIES 2015 NOTES .....	5
THE ISSUER .....	7
THE SYSTEM AND THE UTILITY BOARD.....	8
DEBT SERVICE COVERAGE.....	9
DEBT SERVICE REQUIREMENTS.....	10
INVESTMENT CONSIDERATIONS .....	11
LITIGATION.....	15
LEGAL MATTERS.....	15
TAX MATTERS.....	15
UNDERWRITING .....	18
FINANCIAL STATEMENTS .....	18
CONTINUING DISCLOSURE.....	18
MISCELLANEOUS .....	19

### Appendices:

Appendix A – Kanawha County and Putnam County, West Virginia, Economic and Demographic Data

Appendix B – The System and the Utility Board

Appendix C – Financial Statements of the City of Nitro

Appendix D – Book-Entry Only System

Appendix E – Proposed Form of Bond Counsel Opinion

Appendix F – Form of Ordinance and Notes Supplemental Resolution

Appendix G – Rate Tariff

Appendix H – Form of Continuing Disclosure Agreement

**OFFICIAL STATEMENT**

**\$6,735,000**

**CITY OF NITRO, WEST VIRGINIA  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015**

**INTRODUCTION**

This Official Statement, including the cover page and the Appendices hereto, is provided to set forth certain information concerning the issuance by the City of Nitro, a West Virginia political subdivision and municipal corporation (the "Issuer"), of \$6,735,000 in aggregate principal amount of its Sewerage System Bond Anticipation Notes, Series 2015 (the "Series 2015 Notes"). The Series 2015 Notes are being issued pursuant to the Constitution and laws of the State of West Virginia (the "State"), particularly Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act") and an ordinance enacted by the Council of the Issuer on October 20, 2015, effective November 17, 2015, as supplemented by a supplemental parameters resolution adopted on November 17, 2015 (said ordinance, as so supplemented and together with the Certificate of Determinations incorporated by reference, collectively hereinafter referred to as the "Ordinance"). The net proceeds of the sale of the Series 2015 Notes will be applied: (i) to temporarily finance a portion of the costs of acquisition and construction of the Project, as hereinafter defined; and (ii) to pay costs of issuance of the Series 2015 Notes and related costs. See "PURPOSE AND PLAN OF FINANCING" herein.

The Issuer intends to permanently finance the costs of the Project, as hereinafter defined, and repay the principal amount of the Series 2015 Notes, through the issuance of its sewer revenue bonds, in multiple series, to be purchased by the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Department of Environmental Protection Clean Water State Revolving Loan Fund (the "CWSRF"). The Issuer has received a commitment letter from the CWSRF (the "CWSRF Commitment Letter") to purchase the sewer revenue bonds from the City in the following not to exceed amounts on the following dates (collectively, the "CWSRF Bonds"):

<b>On or Before:</b>	<b>Amount:</b>
December 15, 2016	\$2,000,000.00
December 15, 2017	\$2,000,000.00
December 15, 2018	\$3,204,821.00

The Issuer will issue a series of CWSRF Bonds contemporaneously with the issuance of the Series 2015 Notes in the amount of \$679,519 (the "Series 2015 A CWSRF Bonds") the proceeds of which will be used to prepay all of the Issuer's outstanding Sewerage System Design Bond Anticipation Notes, Series 2013 A (The Huntington National Bank), issued in the original aggregate principal amount of \$800,000, dated September 20, 2013 (the "Series 2013 A Notes"), of which \$679,519 is currently outstanding. The Issuer has pledged to issue the subsequent series of the CWSRF Bonds on or before each of the dates set forth above to pay the outstanding principal amount of the Series 2015 Notes.

The payment of principal of the Series 2015 Notes will be secured by the proceeds of the CWSRF Bonds (except for the Series 2015 A CWSRF Bonds issued contemporaneously therewith). The payment of the interest on the Series 2015 Notes will be secured by the Surplus Revenues derived from the existing public sanitary sewerage collection and treatment system of the Issuer and any extensions, improvements and betterments thereto (the "System"). The System is operated by the Nitro Regional Utility Board (the "Utility Board"). See "APPENDIX B – THE SYSTEM AND THE UTILITY BOARD."

The Prior Bonds (as hereinafter defined), the Series 2015 A CWSRF Bonds and each series of the CWSRF Bonds to be issued (and any additional parity bonds are collectively referred to herein as the "Prior Bonds"), have a lien on the Net Revenue of the System and the funds on deposit in the sinking funds and reserve accounts established for the Prior Bonds in the Ordinances authorizing the issuance of the Prior Bonds. THE SERIES 2015 NOTES DO NOT HAVE A LIEN ON THE NET REVENUES OF THE SYSTEM.

The Series 2015 Notes are special obligations of the Issuer. The Series 2015 Notes do not constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation on indebtedness, and the Issuer shall not be obligated to pay the Series 2015 Notes or the interest or any premium thereon except from the proceeds of the CWSRF Bonds (excluding the Series 2015 A CWSRF Bonds) and the Surplus Revenues of the System. Pursuant to the Ordinance, the Issuer has covenanted and agreed that the schedule or schedules of rates or charges from time to time in effect shall be sufficient to produce Net Revenues equal to not less than 115% of the Maximum Annual Debt Service on the Prior Bonds in any Fiscal Year. See "SECURITY FOR THE SERIES 2015 NOTES - Rate Covenant."

The Series 2015 Notes will be dated, will mature and will bear interest as more fully described under the heading "THE SERIES 2015 NOTES" herein. The Series 2015 Notes will initially be maintained under a book-entry system. So long as the Series 2015 Notes are maintained under a book-entry system, the manner of payment, the denominations, the transfer and exchange of ownership and the method of providing notice of redemption to the owners of the Series 2015 Notes shall be determined as described in "APPENDIX D - BOOK-ENTRY ONLY SYSTEM." If the book-entry system is discontinued, principal of, interest, and premium, if any, on the Series 2015 Notes will be payable by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (the "Paying Agent"), to the owners thereof at the address appearing in the books kept by The Huntington National Bank, as registrar (the "Registrar"). For further information describing the method of payment and other matters in the event the book-entry system is discontinued, see "THE SERIES 2015 NOTES" herein and "APPENDIX F - FORM OF ORDINANCE AND NOTES SUPPLEMENTAL RESOLUTION."

There are no outstanding obligations of the Issuer which will rank on parity with the Series 2015 Notes as to lien, pledge, source of and security for payment. See "SECURITY FOR THE NOTES – No Additional Liens on proceeds of CWSRF Bonds and Surplus Revenues." The Issuer may not issue additional obligations secured from the proceeds of the CWSRF Bonds or the Surplus Revenues of the System so long as any principal of the Series 2015 Notes is outstanding. The Issuer may issue additional bonds on a parity with the Prior Bonds while any principal amount of the Series 2015 Notes is outstanding for the purpose of (i) financing the costs of the construction of additions, betterments or improvements to the System by paying a portion or all of the Series 2015 Notes; (ii) refunding all or a portion of one or more series of the Prior Bonds; (iii) to pay claims which may exist against the revenues or facilities of the System; or (iv) all of such purposes, subject in each case to certain tests and conditions provided for in the Ordinance or the Prior Ordinances. See "SECURITY FOR THE NOTES -- Additional Parity Bonds."

Brief descriptions of the Series 2015 Notes, the Project, the System, the Ordinance, certain provisions of the Act and the Undertaking (as hereinafter defined) are set forth in this Official Statement, as well as other information in the Appendices hereto. Such descriptions and information do not purport to be comprehensive or definitive. All references herein to the Ordinance, the Undertaking, the Act and other documents, statutes, reports or instruments are qualified in their entirety by reference to such documents, statutes, reports or instruments. References herein to the Series 2015 Notes are qualified in their entirety by reference to the forms thereof included in the Ordinance and the information with respect thereto included in the aforesaid documents. Capitalized terms used and not otherwise defined in this Official Statement have the respective meanings given to them in the Ordinance. See "APPENDIX F - FORM OF ORDINANCE AND NOTES SUPPLEMENTAL RESOLUTION."

## PURPOSE AND PLAN OF FINANCING

The proceeds of the Series 2015 Notes will be held by The Huntington National Bank, as trustee (“the Trustee”), under the Notes Trust Indenture by and between the Trustee and the Issuer (the “Indenture”). Under the Indenture, the funds can only be advanced to pay Project costs. The owners of the Series 2015 Notes will have a lien on the proceeds held under the Indenture until expended.

### The Project

The proceeds of the Series 2015 Notes will be used to temporarily finance of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing sanitary sewerage collection and treatment system of the City of Nitro, specifically including, but not limited to, the extension of service to approximately 94 customers in the Blakes Creek and Eastwood Acres areas, the replacement of sewer lines on Bailes Drive, the replacement of Pump Station No. 6, the installation of telemetry at eight major pump stations, the installation of storm sewers in the Pump Station No. 7 drainage area, relining an existing 42 inch clay tile brick sewer line and rehabilitation of manholes, replacement of existing belt filter press, replacement of existing sewer lines on Reeves Drive, relocation of approximately 200 hundred linear feet of the existing eight-inch force mains at the Poca High School pump station, and all appurtenances necessary therefor (collectively, the “Project”).

### Sources and Uses of Series 2015 Note Proceeds

#### Sources:

Principal Amount of the Series 2015 Notes	<u>\$6,735,000.00</u>
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<b>Total Sources of Funds</b>	<b>\$6,735,000.00</b>
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#### Uses:

Deposit to Construction Trust Fund	\$6,602,383.00
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Underwriter’s Discount	\$ 67,350.00
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Costs of Issuance <sup>1</sup>	<u>\$ 65,267.00</u>
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<b>Total Uses of Funds</b>	<b>\$6,735,000.00</b>
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## THE SERIES 2015 NOTES

The Series 2015 Notes are dated the date of delivery. All Series 2015 Notes shall bear interest from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Series 2015 Notes has been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Series 2015 Notes shall be in default, Series 2015 Notes issued in exchange for Series 2015 Notes surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Series 2015 Notes surrendered. The Series 2015 Notes will bear interest

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<sup>1</sup> Includes legal and financing fees, bond counsel fees, underwriter’s counsel fees, accounting, trustee fee, registrar’s fee, rounding amounts and other miscellaneous expenses relating to the issuance of the Series 2015 Notes.

from their date, payable semiannually on each January 1 and July 1 in each year (each an “Interest Payment Date”), commencing July 1, 2016.

The Series 2015 Notes will be issued as fully registered Series 2015 Notes without coupons, in denominations of \$5,000 or any integral multiples thereof for any year of maturity. Interest on the Series 2015 Notes shall be payable by check or draft made payable and mailed by the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the “Paying Agent”), to the Registered Owner thereof as of the applicable Record Date (each December 15 and June 15) or, at the option of any Registered Owner of \$1,000,000 or more of the Series 2015 Notes, by wire transfer to a domestic bank account specified in writing at least 5 days prior to the Record Date by such Registered Owner. Principal of and interest and premium, if any, on the Series 2015 Notes shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender thereof at the principal corporate trust office of the Paying Agent.

Ownership of any Note may be transferred only by transfer of registration presented to the Registrar by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his duly authorized attorney or legal representative. Upon any such transfer of a Series 2015 Note, there will be issued another Series 2015 Note or Series 2015 Notes, at the option of the Holder or transferee, of the aggregate principal amount equal to the unpaid amount of the transferred Series 2015 Note and of the same series, interest rate and maturity of said transferred Series 2015 Note. For every exchange or transfer of Series 2015 Notes, the Registrar may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer. Any applicable tax, governmental charge or charge to reimburse the Registrar for any tax or governmental charge shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such transfer or exchange. The Registrar shall not be obliged to make any such transfer or exchange of Series 2015 Notes that have been called for redemption.

The Series 2015 Notes are available in book-entry form only. See “BOOK-ENTRY ONLY SYSTEM” below and “APPENDIX D – BOOK-ENTRY ONLY SYSTEM.” So long as Cede & Co. is the registered owner of the Series 2015 Notes as nominee of The Depository Trust Company, New York, New York, references herein to the Bondholders or registered owners of the Series 2015 Notes shall mean Cede & Co. and shall not mean the beneficial owners of the Series 2015 Notes.

#### BOOK-ENTRY ONLY SYSTEM

Purchasers of the Series 2015 Notes will not receive certificates representing their interests in the Series 2015 Notes purchased. The Series 2015 Notes will be registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York. SEE “APPENDIX D– BOOK-ENTRY ONLY SYSTEM.”

#### **No Assurance Regarding DTC Practices**

Neither the Issuer nor the Utility Board can or does give any assurances that DTC, the Direct Participants or the Indirect Participants will distribute to the Beneficial Owners of the Series 2015 Notes (1) payments of principal of or interest and premium, if any, on the Series 2015 Notes, (2) confirmation of beneficial ownership interest in the Series 2015 Notes, or (3) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Series 2015 Notes, or that they will do so on a timely basis, or that DTC, Direct Participants or Indirect Participants will serve and act in the manner described in this Official Statement. The current “rules” applicable to DTC are on file with the Securities and Exchange Commission, and the current “procedures” of DTC to be followed in dealing with Direct Participants are on file with DTC.

None of the Issuer, the Utility Board or the Paying Agent shall have any responsibility or obligation to any Direct Participant, Indirect Participant, Beneficial Owner or any other person with respect to (1) the accuracy of any records maintained by DTC or any Participant; (2) the payment by DTC or any Participant of any amount due to any Beneficial Owner in respect of the principal amount or redemption price of or interest on the Series 2015 Notes; (3) the delivery by DTC or any Participant of any notice to any Beneficial Owner which is required or permitted under the terms of the Ordinance to be given to Bondholders; or (4) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of the Series 2015 Notes.

## SECURITY FOR THE SERIES 2015 NOTES

The Series 2015 Notes are special obligations of the Issuer and are payable as to principal, premium, if any, and interest solely from the sources described below. The Issuer is under no obligation to pay the Series 2015 Notes except from said sources.

### **Outstanding Prior Bonds**

The Issuer has outstanding the following Sewer Revenue Bonds payable from the Net Revenues of the System that are senior and superior to the Series 2015 Notes: (i) Sewer Revenue Bonds, Series 1996 A (West Virginia Water Development Authority), dated December 10, 1996, issued in the original aggregate principal amount of \$4,575,502 (the "Series 1996 A Bonds"), of which approximately \$807,912 is currently outstanding; (ii) Sewer Revenue Bonds, Series 2000 A (West Virginia Water Development Authority), dated June 28, 2000, issued in the original aggregate principal amount of \$2,050,000 (the "Series 2000 A Bonds"), of which approximately \$1,110,395 is currently outstanding; (iii) Sewer Revenue Bonds, Series 2001 A (West Virginia SRF Program), dated June 5, 2001, issued in the original aggregate principal amount of \$543,800 (the "Series 2001 A Bonds"), of which approximately \$299,072 is currently outstanding; (iv) Sewer Revenue Bonds (West Virginia SRF Program), Series 2009 A, dated November 12, 2009 (the "Series 2009 A Bonds"), issued in the original aggregate principal amount of \$1,910,778, of which approximately \$1,528,618 is currently outstanding; (v) Sewer Revenue Bonds, Series 2015 A, to be issued contemporaneously with the Series 2015 Notes, (the "Series 2015 A CWSRF Bonds"), in the original aggregate principal amount of \$679,519.00; and (vi) the CWSRF Bonds to be issued after the date of issuance of the Series 2015 Notes (collectively, the "Prior Bonds"). The ordinances pursuant to which the Prior Bonds were issued, or will be issued, are hereinafter collectively referred to as the "Prior Ordinances."

### **Sources of Payment**

The payment of the principal on the Series 2015 Notes shall be secured forthwith equally and ratably by a first lien on the proceeds of the CWSRF Bonds (excluding the Series 2015 A CWSRF Bonds). The payment of the interest on the Series 2015 Notes is secured by a sole first lien on the Surplus Revenues of the System. THE SERIES 2015 NOTES DO NOT HAVE A LIEN ON THE NET REVENUES OF THE SYSTEM.

### **Rate Covenant**

The schedule or schedules of rates and charges for the System 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 and accounts created under the Ordinance for the Prior Bonds. Such schedule or schedules of rates and charges shall be revised from time to time, 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 covenants and agrees in the Ordinance that the schedule or schedules of rates or charges from time to time in effect shall be sufficient to produce Net Revenues equal to not less than 115% of the Maximum Annual Debt Service on the Prior Bonds in any Fiscal Year. All such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System. See "APPENDIX B - THE SYSTEM AND THE UTILITY BOARD" and "APPENDIX G - RATE TARIFF."

## **Application of Gross Revenues**

The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the Issuer in the Revenue Fund. The Revenue Fund shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. All Revenues at any time remaining on deposit in the Revenue Fund shall be disposed only in the following manner and order of priority:

(1) The Issuer shall first, each month, pay from the Revenue Fund the current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission for deposit in the Sinking Funds of the Prior Bonds, the amounts required by the Prior Ordinances to pay the interest on the Prior Bonds.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission for deposit in the Sinking Funds of the Prior Bonds, the amounts required by the Prior Ordinances to pay the principal of the Prior Bonds.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission for deposit in the Reserve Accounts of the Prior Bonds, the amount required by the Prior Ordinances. Amounts in the Reserve Accounts for the Prior Bonds shall be used only for the purpose of making payments of principal of and interest on the respective Prior Bonds when due, when amounts in respective Sinking Funds for the Prior Bonds are insufficient therefor and for no other purpose.

(5) The Issuer shall next, from the monies remaining in the Revenue Fund, on the first day of each month, transfer to the Renewal and Replacement Fund a sum equal to not less than 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinances and not in addition thereto), exclusive of any payments for account of any Reserve Account for the Prior Bonds. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, or improvements or extensions to the System; provided, that any deficiency in any Reserve Account for the Prior Bonds, 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 thereof, shall be promptly eliminated with monies from the Renewal and Replacement Fund.

(6) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Bond Commission, commencing seven (7) months prior to the first interest payment date of the Series 2015 Notes, for deposit in the Series 2015 Notes Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 2015 Notes on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2015 Notes Sinking Fund and the next ensuing semiannual interest payment date is more 7 or less than seven (7) months, then such monthly payments shall be decreased or increased proportionately to provide, one (1) month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided, further, that there shall be credited against the amount deposited any interest capitalized from the proceeds of the Series 2015 Notes and applied to such payment.



## **Enforcement of Collections**

The Issuer covenants in the Ordinance to 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 and other charges that shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State. Such fees, rentals and charges, if not paid when due, shall, to the extent allowed by the Act, become a lien on the premises served by the System.

The Issuer further covenants and agrees that it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services and facilities of the System and will not restore such services of the System until all billing for charges for the services and facilities of the System, including penalties and reconnect fees, have been fully paid, or a payment agreement in compliance with the West Virginia Public Service Commission regulations has been entered.

## **Additional Prior Bonds**

While any of the principal amount of the Series 2015 Notes are outstanding, Additional Parity Bonds payable out of the Net Revenues of the System may be issued for the purpose of: (i) paying the Series 2015 Notes and/or financing the costs of the construction of additions, betterments or improvements to the System; (ii) refunding all or a portion of one or more series of Prior Bonds; (iii) paying claims which may exist against the revenues or facilities of the System; or (iv) all of such purposes.

## **No Additional Liens on Proceeds of CWSRF Bonds and Surplus Revenues**

So long as any of the principal amount of the Series 2015 Notes is outstanding, the Issuer may not issue any obligation secured by, or otherwise pledge, the proceeds of the CWSRF Bonds or the Surplus Revenues except for payment of the principal and interest on Series 2015 Notes.

## **Special, Limited Obligations**

The Series 2015 Notes do not constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation on indebtedness. No registered owner of any Series 2015 Note shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2015 Notes or the interest or any premium thereon.

## **THE ISSUER**

The City of Nitro is located in Kanawha and Putnam Counties, along the Kanawha River, just off Interstate 64 in the western portion of the State of West Virginia with an estimated population of 6,837 as of July, 2014.

## **Government**

The Issuer was first organized as the Town of Nitro in 1917 and presently operates under the strong mayor form of government pursuant to a charter adopted as of February 20, 1932. The City is governed by a seven-member City Council each member of which is elected to a four-year term by the voters of the City.

## **Information Regarding Issuer**

The principal of the Series 2015 Notes will be secured by the proceeds of the CWSRF Bonds (excluding the Series 2015 A CWSRF Bonds), and the interest on the Series 2015 Notes will be secured from the Surplus Revenues of the System, which are pledged to their payment. No other funds of the Issuer are available or expected

to be used to pay the principal of, or interest on, the Series 2015 Notes. Information regarding the Issuer has not been included in this Official Statement; provided, that the audited financial statements of the Issuer for the fiscal year ended June 30, 2014 are included in Appendix C hereto. See "APPENDIX C – FINANCIAL STATEMENTS OF THE CITY OF NITRO."

#### THE SYSTEM AND THE UTILITY BOARD

The sewerage system of the Issuer has been operated under the control of the Utility Board since 1958. Pursuant to Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended, and an ordinance of the City Council of the Issuer adopted on March 4, 1958, custody, administration, operation and maintenance of the System were placed under the supervision and control of the Utility Board. Pursuant to the Act, City Council retains the power to establish and maintain rates and charges for the use of services provided by the System and to issue revenue bonds and other obligations secured by the revenues and assets of the System for the purposes of the System.

For information regarding the Utility Board and the System, including the applicable rates, see "APPENDIX B - THE SYSTEM AND THE UTILITY BOARD," "APPENDIX C - FINANCIAL STATEMENTS OF THE CITY OF NITRO," and "APPENDIX G - RATE TARIFF."

#### **Coverage Ratios**

Under certain Prior Ordinances, the Issuer has covenanted to collect fees and charges such that Net Revenues available for debt service are not less than 115% of the average annual debt service on the Prior Bonds. Under the Ordinance, the Issuer has covenanted that the schedule or schedules of rates or charges from time to time in effect shall be sufficient to produce Net Revenues equal to not less than 115% of the Maximum Annual Debt Service on the Prior Bonds in any Fiscal Year.

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DEBT SERVICE COVERAGE

	FY 2013	FY 2014	FY 2015	ProForma FY 2016	ProForma FY 2017	ProForma FY 2018
Operating Revenues	\$ 1,910,386	\$ 2,049,728	\$ 2,144,525	\$ 2,167,667	\$ 2,190,809	\$ 2,216,088
Operating Expenses	\$ (1,983,505)	\$ (2,027,147)	\$ (1,988,620)	\$ (2,088,051)	\$ (2,192,454)	\$ (2,380,445)
Operating Income	\$ (73,119)	\$ 22,581	\$ 155,905	\$ 79,616	\$ (1,645)	\$ (164,357)
LESS:						
Administrative Bond Fees	\$ 4,175	\$ 4,175	\$ -	\$ 7,061	\$ 14,336	\$ 25,872
ADD:						
Depreciation Expense	\$ 520,899	\$ 485,774	\$ 453,721	\$ 601,721	\$ 749,721	\$ 815,588
Interest Expense	\$ 31,104	\$ 37,819	\$ 43,306	\$ 106,791	\$ 127,876	\$ 22,185
Other Income	\$ 98,700	\$ 89,600	\$ 91,343	\$ 95,000	\$ 95,000	\$ 98,700
Amount Available for Debt Service	\$ 581,759	\$ 639,949	\$ 744,275	\$ 890,189	\$ 985,288	\$ 797,988
Debt Service	\$ 451,704	\$ 457,144	\$ 485,079	\$ 430,615	\$ 182,000	\$ 538,185
Calculated Debt Service Coverage	129%	140%	153%	207%	541%	148%

Source: Nitro, WV Audits and Rule 42 dated 6-17-14

**ProForma Assumptions:**

- Note #1: 1996 Bonds to be paid with debt service reserve fund in June, 2016. No interest allocated on the 1996 Bonds in FY2017
- Note #2: FY2016 revenue increase attributed to 50% of new customer billings; FY2017 revenue increase attributed to 100% of new customer billing
- Note #3: Operating Expenses increase by a flat 5% each year
- Note #4: Administrative Bond Fees are included in the Operating Expenses; FY2016 forward are the net increase in Bond Fees

## DEBT SERVICE REQUIREMENTS

The following table sets forth for each fiscal year during which the Series 2015 Notes will be outstanding, beginning Fiscal Year 2016 (July 1, 2015 – June 30, 2016), the interest amounts payable from Surplus Revenues and the principal amounts payable from the proceeds of the CWSRF Bonds (excluding the Series 2015 A CWSRF Bonds):

### Net Debt Service Schedule

Date	Principal	Interest	Total P+I	Fiscal Total
12/03/2015	-	-	-	-
07/01/2016	-	70,221.67	70,221.67	-
01/01/2017	2,000,000.00	60,768.75	2,060,768.75	-
06/30/2017	-	-	-	2,130,990.42
07/01/2017	-	48,268.75	48,268.75	-
01/01/2018	2,000,000.00	48,268.75	2,048,268.75	-
06/30/2018	-	-	-	2,096,537.50
07/01/2018	-	30,768.75	30,768.75	-
01/01/2019	2,735,000.00	30,768.75	2,765,768.75	-
06/30/2019	-	-	-	2,796,537.50
<b>Total</b>	<b>\$6,735,000.00</b>	<b>\$289,065.42</b>	<b>\$7,024,065.42</b>	-

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## INVESTMENT CONSIDERATIONS

*The following discussion of investment considerations is not meant to be an exhaustive list of the considerations relating to the purchase of the Series 2015 Notes, and the order in which the factors are described does not necessarily reflect the relative importance of the various factors.*

### **Special, Limited Obligations**

The Series 2015 Notes are special, limited obligations of the Issuer, secured by proceeds of the CWSRF Bonds (except for the Series 2015 A CWSRF Bonds issued contemporaneously therewith), the interest on the Series 2015 Notes is secured and payable from the Surplus Revenues of the System and from funds on deposit in the Series 2015 Notes Payment Fund. The obligation of the Issuer to pay debt service on the Series 2015 Notes does not constitute an obligation of the Issuer to levy or pledge any form of taxation or for which the Issuer has levied or pledged any form of taxation, and the Issuer shall not be obligated to pay the Series 2015 Notes, or premium, if any, or the interest thereon, except from such Net Revenues and such funds on deposit in the Series 2015 Notes Payment Fund for the Series 2015 Notes. The pledge is only of the Surplus Revenues, meaning that the operation and maintenance expenses and the Prior Bonds are paid prior to debt service.

### **Financial Difficulties of the Issuer**

The Series 2015 Notes are secured by the CWSRF Bonds (except for the Series 2015 A CWSRF Bonds issued contemporaneously therewith), the interest on the Series 2015 Notes is secured and payable from the Surplus Revenues of the System and from funds on deposit in the Series 2015 Notes Payment Fund. No other funds of the Issuer are available or expected to be used to pay the Notes. Likewise, the Gross Revenues of the System are not used for other purposes of the Issuer. Accordingly, detailed information regarding the Issuer has not been included in this Official Statement. However, although operated by the Utility Board, the System is owned by and constitutes an asset of the Issuer. As such, any severe financial difficulties of the Issuer could adversely affect the market value of the Series 2015 Notes.

### **Future Legislation**

Current or future legislative proposals, if enacted into law, may cause interest on the Series 2015 Notes to be subject, directly or indirectly, to federal income taxation or otherwise prevent holders of the Series 2015 Notes from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals may also affect the market price for, or marketability of, the Series 2015 Notes. Prospective purchasers of the Series 2015 Notes should consult their own tax advisors regarding any such pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

It is not an event of default on the Series 2015 Notes if any legislation is enacted reducing or eliminating the exclusion of interest on state and local government Bonds from gross income for federal income tax purposes.

### **The Public Service Commission of West Virginia**

In West Virginia, sewerage utilities such as the System are subject to regulatory oversight by the Public Service Commission of West Virginia (the "Commission") in certain situations. Specifically, pursuant to Chapter 24, Article 2, Section 11 of the Code of West Virginia, 1931, as amended, utilities must obtain a certificate of public convenience and necessity prior to proceeding to construction for projects which are outside of "the usual course of business." Additionally, rate increases enacted by the Council of the Issuer are subject to review by the Commission for regulatory "notice" requirements and, under certain circumstances, the actual enacted rates. Municipal sewerage utilities in West Virginia do not have the ability to adjust rates without the possibility of regulatory review by the Commission. The parameters surrounding this review are discussed below. Such regulatory review may delay or halt the

implementation of rate increases which could cause the utility to fail to meet rate covenants or produce revenue sufficient to pay debt service.

The Commission has two levels of review. Most cases are initially assigned to an administrative law judge (“ALJ”) for decision. The Commission employs a “staff” comprised of engineers, lawyers and financial analysts (the “Staff”) to review cases and make recommendations. The Issuer is also permitted to make recommendations, as are other parties who are granted “intervenor” status. The ALJ may conduct a hearing, at which evidence is presented and witnesses for all parties may be cross-examined, after which a recommended decision is issued. Any party to the underlying proceeding, including a party granted intervenor status, may take exception to the recommended decision of the ALJ, in which case the matter is referred to the full Commission for decision.

### **Commission Regulatory Oversight of Rate Increases**

Pursuant to Chapter 8, Article 11, Section 4, Chapter 16, Article 13, Section 16, and Chapter 24, Article 2, Section 4b of the Code of West Virginia, 1931, as amended, the Council of the Issuer has the ability to establish rates for the sewerage utility through the enactment of an ordinance, following a public hearing on such ordinance. In the enactment of such an ordinance, the Issuer must comply with regulations of the Commission related to providing notice of such proposed rate increase. The Commission reviews the compliance of the Issuer with such regulations and, if the Commission determines that the Issuer has failed to satisfy the requirements of the regulations, the Commission may declare the rate ordinance invalid.

In such instance, the Issuer would have no choice but to reenact the ordinance.

### **Commission Review of Proposed Rate Increases**

Once enacted by the Issuer, the proposed rates are subject to review by the Commission under the following scenario: Any customer aggrieved by the changed rates or charges who presents to the Commission a petition signed by not less than 25% of the customers served. A customer must file such a petition within 30 days after enactment of the sewer rate ordinance.

If the above occurs, the Commission then takes “jurisdiction” over the rates, initiating an investigation into the reasonableness of the enacted rates. Pursuant to Chapter 24, Article 2, Section 4b of the Code of West Virginia, 1931, as amended (the “PSC Act”), the rates enacted by the Issuer are suspended for 120 days from the date the rates would otherwise have gone into effect (i.e., immediately upon enactment if the rate increase results in an increase of less than 25% of the gross revenue of the utility; otherwise, 45 days from enactment of the rate ordinance) and the new rates, if any, established by the Commission will go into effect at that end of the suspension period.

### **Potential Delays for the Implementation of Rate Increases**

Generally, the process of enacting a rate ordinance requires a minimum of two weeks (two readings by Council, separated by sufficient time to allow for the publication of two legal notices prior to the public hearing and second reading, with the first publication occurring not less than 10 days prior to the public hearing and second reading date). Pursuant to the PSC Act and regulations of the Commission, the rates can go into effect immediately upon enactment if the rate increase results in an increase of less than 25% of the gross revenue of the utility; provided, however, that revenues collected from rates put into effect upon enactment may be subject to refund if the rates are subsequently disapproved or modified by the Commission in an appeal proceeding. If the rate increase is greater than 25% of the gross revenue of the utility, then the new rates cannot go into effect any sooner than 45 days from the date of enactment, provided that an appeal of the proposed rates does not occur. In the event that the Commission takes jurisdiction of the rate increase, the Commission will establish a decision due date for the ALJ that is generally 30 days prior to the end of the 120-day suspension period. If any of the parties, however, appeal the ALJ’s recommended decision to the full Commission, the Commission must render its decision no later than the end of the 120-day suspension period.

A final decision of the Commission may be appealed to the Supreme Court of Appeals of West Virginia, which Court has no statutory time frame within which to render a decision. While a party does have the right to appeal a Commission decision, the Supreme Court of Appeals of West Virginia has “‘previously held, in deference to the Commission’s expertise, that the Court will not substitute [its] judgment for that of the Commission on controverted evidence. However, findings of fact made by the Commission will be overturned as clearly wrong when there is no substantial evidence to support them.’” *Berkeley Utils., Inc. v. Pub. Serv. Comm’n of W. Va.*, 227 W. Va. 589, 595, 712 S.E.2d 498, 504 (2011) (quoting *Chesapeake and Potomac Tel. Co. of W. Va. v. Pub. Serv. Comm’n of W. Va.*, 171 W. Va. 494, 498, 300 S.E.2d 607, 611 (1982)). In other words, the Court gives significant deference to decisions of the Commission. Commission-approved rates may be charged (provided that the applicable suspension period has ended) during an appeal to the Supreme Court of Appeals of West Virginia. If the appealing party prevails and new rates are established by the court, the new rates apply prospectively.

Consequently, the time period from the first reading of a rate ordinance to the increased rates being charged to the customers is a minimum of 14 days, and if the Commission takes jurisdiction, can exceed 180 days (Commission approved rates are billable during an appeal to the Supreme Court of Appeals of West Virginia). From the date the new rates begin to be charged, the Issuer should realize revenues in approximately 45 to 60 days. Resale customers are required to obtain authorization from the Commission for any necessary increase in resale rates. Such increases are often granted by the Commission after the rates for the Issuer go into effect, which means no assurance exists that resale customers will have sufficient revenues to begin paying the increased resale rates. The Commission can, and has on occasion, pre-approved resale rate increases in advance of the effective date of the new rates. As a result, resale customers may have the ability to begin charging the new resale rates of the Issuer as soon as the rates go into effect.

### **Test Year**

If the Commission takes jurisdiction over a municipality’s rate ordinance as described above, the regulations of the Commission require a municipality to file “financial justification” for the enacted rate increase. This financial justification must be based on financial data from the most recent actual audited or finally closed 12-month period ending on a calendar quarter, also known as the “test year.” Events which occur outside the test year are not generally permitted in the rate adjustment. A determination at the end of any 12-month period that a rate increase is necessary may not result in increased rates and collections for nine months or more from the end of that period.

The Issuer has the option to proceed with a rate increase at any time during the course of the year; however, the financials examined by the Commission will be the financials for the most recent full fiscal year, not the 12-month period immediately preceding the date of the request.

### **Reliance on “Known and Measurable” Adjustments**

When considering adjustments to the rates of a utility for costs occurring during the “test year,” the Commission’s regulations require that the need for, and amount of, such adjustments be based on information that is “known and measurable.” As a result, a change in revenues or expenses must, in most cases, have occurred in the test year being analyzed. If an increase in a cost, or a decline in revenue, is anticipated for the coming year, the Commission generally will not take such change into account for rate-making purposes unless the change occurs during the test year.

As a result of the requirement that the support for adjustments be “known and measurable,” the Commission will generally not allow multi-year rate increases to address anticipated inflation or drops in customer usage. Therefore, the Issuer must initiate the rate ordinance process, and potential Commission review, whenever increased costs or decreased revenues necessitate a rate increase.

## **Emergency Rate Increase**

In the event the Commission takes jurisdiction of a rate increase, the PSC Act permits the Issuer to request “emergency rates” if it is in “financial distress.” Financial distress has been defined by the Commission to mean the utility is unable to pay operation and maintenance expenses and the principal and interest on the utility’s debt obligations. Such rates, however, are subject to refund, in the event the Commission determines that the emergency rates, or any portion thereof, are not warranted. Generally, emergency rates CANNOT be obtained to meet coverage requirements in bond documents.

## **Working Capital Reserve**

Pursuant to Chapter 24, Article 1, Section 1(k) of the Code of West Virginia, 1931, as amended, effective June 12, 2015, the System is required to “. . . maintain a working capital reserve in an amount of no less than one eighth of actual annual operation and maintenance expense. This reserve shall be separate and distinct from and in addition to any repair and replacement fund that may be required by bond covenants.” Neither the Legislature nor the Commission have provided guidance on the specifics of the term “maintain” as to whether it is expected that the City will have to have, at all times, sufficient funds on hand to satisfy the “one eighth of actual annual operation and maintenance expense” and whether such language is subject to an ongoing or annual test. The City has, as required by State law, previously adopted a budget for the System for the 2015-2016 fiscal year. The City will budget for the working capital reserve in future fiscal years. In the event that any audited or un-audited fiscal year-end financial statement of the System shall find that the working capital reserve for such fiscal year was insufficient, such finding shall not be a default on the Series 2015 Notes.

## **Annual Municipal Audit**

Pursuant to Chapter 6, Article 9 of the Code of West Virginia, 1931, as amended (the “Audit Act”), the State Auditor, as the chief inspector and supervisor of public offices (the “Chief Inspector”) is charged with the responsibility of (1) formulating, prescribing and installing a system of accountability for all local units of government in West Virginia, including municipalities, and (2) examining the financial affairs of every local government office or political subdivision and all boards, commissions, authorities, agencies or other offices. The Issuer is a local government under the Audit Act. Accordingly, pursuant to Section 7 of the Audit Act, an audit of the Issuer’s finances must be accomplished by the Chief Inspector or any person appointed by him. Accordingly, the actions or lack of actions of the Chief Inspector may adversely impact the ability to have the annual audited financial information required to be submitted to EMMA pursuant to the Continuing Disclosure Agreement. See “CONTINUING DISCLOSURE” herein. Additionally, the Issuer has no power to require the Chief Inspector to take any action required under such procedures that would ensure the completion of the audit to meet the timely filing of such information.

## **Limitation on Remedies and Limited Recourse on Default**

The remedies available to the owners of the Series 2015 Notes upon the occurrence of an event of default with respect to the Series 2015 Notes are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain.

In addition, the rights and remedies of the owners of the Series 2015 Notes under the Ordinance and state law may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditor’s rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against cities and Utility Boards in the State of West Virginia. The opinions delivered by Bond Counsel concurrently with the issuance of the Series 2015 Notes will be subject to such limitations and the various legal opinions to be delivered concurrently with the issuance of the Series 2015 Notes will be similarly qualified. See “APPENDIX E – PROPOSED FORM OF BOND COUNSEL OPINION.”



## **Secondary Market for Notes**

There can be no guarantee that there will be a secondary market for the Series 2015 Notes or, if a secondary market exists, that any Series 2015 Notes can be sold for any particular price. Occasionally, because of general market conditions or because of adverse history or economic prospects connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Accordingly, prices of issues for which a market is being made will depend upon then-prevailing circumstances. Such prices could be substantially different from the original purchase price.

## **LITIGATION**

There is no litigation or other proceeding pending or, to the knowledge of the Issuer, threatened to restrain or enjoin the issuance, sale, or delivery of the Series 2015 Notes, or in any way contesting the validity or enforceability of the Series 2015 Notes, or the proceedings pursuant to which the Series 2015 Notes are issued.

## **LEGAL MATTERS**

Legal matters incident to the authorization, issuance and sale of the Series 2015 Notes are subject to the unqualified approving opinion of Jackson Kelly PLLC, Bond Counsel, whose opinion will be delivered concurrently with the delivery, upon original issuance, of the Series 2015 Notes. Certain legal matters will be passed upon for the Issuer by Johnnie Brown, Esquire, City Attorney. Steptoe & Johnson PLLC will pass upon certain matters as counsel for the Underwriter.

## **TAX MATTERS**

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, PROSPECTIVE HOLDERS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES IN THIS OFFICIAL STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY HOLDERS OF THE SERIES 2015 NOTES FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON SUCH HOLDERS UNDER THE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) PROSPECTIVE HOLDERS OF THE NOTES SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

The following discussion of Tax Matters is a brief description of certain income tax matters with respect to the Series 2015 Notes existing under applicable law. It does not purport to deal with all aspects of taxation that may be relevant to an owner of Notes. Prospective investors, particularly those who may be subject to special rules, are advised to consult their own tax advisors regarding the tax consequences of owning and disposing of the Series 2015 Notes. The following discussion is not binding on the Internal Revenue Service ("IRS"), any state or municipal tax authority, or any court. It represents Jackson Kelly PLLC's (hereafter "Bond Counsel") legal judgment as to the excludability of interest on the Series 2015 Notes from gross income for federal income tax purposes, but is not a guarantee of that conclusion.

### **Federal Income Tax Exemption of the Series 2015 Notes**

In the opinion of Bond Counsel, based upon an analysis of existing laws, regulations, published rulings and judicial decisions, as presently written and applied, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series 2015 Notes is excludable from gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Code. Bond Counsel is of the further opinion that interest on the Series 2015 Notes

will not be treated as a preference item for purposes of the federal alternative minimum tax imposed under the Code with respect to individuals and corporations. Under the Code, however, such interest is included in the adjusted current earnings of a corporation for purposes of computing the alternative minimum tax. A complete copy of the proposed form of opinion of Bond Counsel for the Series 2015 Notes is set forth in APPENDIX E – PROPOSED FORM OF BOND COUNSEL OPINION attached hereto.

### **Assumed Compliance with Certain Covenants and Federal Tax Requirements**

The opinion on federal tax matters with respect to the Series 2015 Notes is based on the accuracy of certain representations and certifications, and continuing compliance with certain covenants, of the Issuer contained in the transcript of proceedings and which are intended to evidence and assure the foregoing, including that the Series 2015 Notes are and will remain obligations the interest on which is excludable from gross income for federal income tax purposes. The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Series 2015 Notes. The Issuer has covenanted to take the actions required of it for the interest on the Series 2015 Notes to be and to remain excludable from gross income for federal income tax purposes and not to take any actions that would adversely affect that exclusion. Bond Counsel's opinion assumes the accuracy of the Issuer's certifications and representations and the continuing compliance with the covenants of the Issuer. Noncompliance with these covenants by the Issuer may cause the interest on the Series 2015 Notes to be included in gross income for federal income tax purposes retroactively to the date of issuance of the Series 2015 Notes. After the date of issuance of the Series 2015 Notes, Bond Counsel will not undertake to determine (or to so inform any person) whether any actions taken or not taken, or any events occurring or not occurring, or any other matters coming to Bond Counsel's attention, may adversely affect the exclusion from gross income for federal income tax purposes of interest on the Series 2015 Notes or the market prices of the Series 2015 Notes. Further, no assurance can be given that pending or future legislation or amendments to the Code, if enacted into law, or any proposed legislation or amendments to the Code, will not adversely affect the value of, or the tax status of interest on, the Series 2015 Notes. Prospective purchasers of Bonds are urged to consult their own tax advisors with respect to proposals to restructure the federal income tax.

The tax status of the Series 2015 Notes could be affected by post-issuance events. There are various requirements of the Code that must be observed or satisfied after the issuance of the Series 2015 Notes in order for the Series 2015 Notes to qualify for, and retain, tax-exempt status. These requirements include those relating to use of the proceeds of the Series 2015 Notes, use of the Project financed by the Series 2015 Notes, investment of bond proceeds, and the rebate of so-called excess arbitrage earnings. Compliance with these requirements is the responsibility of the Issuer.

The IRS conducts an audit program to examine compliance with the requirements regarding tax-exempt status. If the Series 2015 Notes become the subject of an audit, under current IRS procedures, the Issuer would be treated as the taxpayer, and the owners of the Series 2015 Notes would have limited rights to participate in the audit process. The initiation of an audit with respect to the Series 2015 Notes could adversely affect the market value and liquidity of the Series 2015 Notes, even though no final determination about the tax-exempt status would have been made. If an audit were to result in a final determination that the Series 2015 Notes do not qualify as tax-exempt obligations, such a determination could be retroactive in effect to the date of issuance of the Series 2015 Notes.

Certain requirements and procedures contained or referred to in the Ordinance, Indenture, the Tax Agreement and other relevant documents may be changed and certain actions (including, without limitation, defeasance of the Series 2015 Notes) may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents. Bond Counsel expresses no opinion as to any obligations, or the interest thereon, if any such change occurs or action is taken or omitted upon the advice or approval of bond counsel other than Jackson Kelly PLLC.

## **Information Reporting and Backup Withholding**

As a result of the enactment of the Tax Increase Prevention and Reconciliation Act of 2005, interest on tax-exempt obligations such as the Series 2015 Notes are subject to information reporting in a manner similar to interest paid on taxable obligations. A recipient not otherwise exempt from information reporting who fails to satisfy the information reporting requirements will be subject to “backup withholding,” which means that the payor is required to deduct and withhold a tax from the interest payment, calculated in the manner set forth in the Code. For the foregoing purpose, a “payor” generally refers to the person or entity from whom a recipient receives its payments of interest or who collects such payments on behalf of the recipient. In any event, backup withholding does not affect the excludability of the interest on the Series 2015 Notes from gross income for federal income tax purposes. Any amounts withheld pursuant to the backup withholding should be allowed as a refund or a credit against any owner’s federal income tax once the required information is furnished to the IRS.

## **State Income Tax Exemption**

In the opinion of Bond Counsel, under the Act, as presently written and applied, the Series 2015 Notes, and all interest and income thereon, shall be exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

## **Individual Circumstances**

Although Bond Counsel is of the opinion that interest on the Series 2015 Notes is excludable from gross income for federal income tax purposes, the ownership or disposition of, or the accrual or receipt of interest on, the Series 2015 Notes may otherwise affect an owner’s federal liability. The nature and extent of these other tax consequences will depend upon the particular tax status of the owner or the owner’s other items of income or deduction. Bond Counsel expresses no opinion regarding any such other tax consequences. Ownership of the Series 2015 Notes may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, corporations subject to the branch profits tax, financial institutions, certain insurance companies, certain S corporations, individual recipients of Social Security or Railroad Retirement benefits and taxpayers who may be deemed to have incurred (or continued) indebtedness to purchase or carry the Series 2015 Notes. Bond Counsel will express no opinion regarding any such consequences.

## **Future Tax Changes**

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the Series 2015 Notes to be subject, directly or indirectly, to federal income taxation or cause the interest on the Series 2015 Notes to be subject to or not exempted from state income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals, clarification of the Code or court decisions may also affect the market price for, or marketability of the Series 2015 Notes. Prospective purchasers of the Series 2015 Notes should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel’s judgment as to the proper treatment of the Series 2015 Notes for federal income tax purposes. It is not binding on the IRS or the courts. Furthermore, Bond Counsel cannot give and has not given any opinion or assurance about the future activities of the Issuer or about the effect of future changes in the Code, the application regulations, the interpretation thereof or the enforcement thereof by the IRS. The Issuer has covenanted, however, to comply with the requirements of the Code.

## **Designation of Qualified Tax-Exempt Obligations**

In the opinion of Bond Counsel, the Series 2015 Notes are “qualified tax-exempt obligations” and the provisions of the Code which disallow all deductibility of interest expenses incurred by financial institutions on debt incurred or continued to carry most tax-exempt obligations does not apply to the Series 2015 Notes; accordingly, 80% of the interest expense of a financial institution incurred for the purpose of purchasing or carrying the Series 2015 Notes is deductible for federal income purposes.

### **Bond Counsel Obligations**

Bond Counsel’s engagement with respect to the Series 2015 Notes ends with the issuance of the Series 2015 Notes, and unless separately engaged, Bond Counsel is not obligated to defend the Issuer or the beneficial owners regarding the tax-exempt status of the Series 2015 Notes in the event of an audit examination by the IRS. Under current procedures, parties other than the Issuer and its appointed counsel including the beneficial owners, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of the Series 2015 Notes would be difficult, obtaining an independent review of IRS positions with which the Issuer legitimately disagrees may not be practicable. Any action of the IRS, including but not limited to selection of the Series 2015 Notes for audit, or the course or result of such audit, or an audit of tax-exempt obligations presenting similar tax issues may affect the market price for, or the marketability of, the Series 2015 Notes, and may cause the Issuer or the beneficial owners to incur significant expense.

Bond Counsel’s opinions represent its legal judgment based in part upon the representations and covenants referenced therein and its review of existing law, but are not a guarantee of result or binding on the IRS or the courts. Bond Counsel assumes no duty to update or supplement its opinions to reflect any facts or circumstances that may come to Bond Counsel’s attention after the date of its opinions or to reflect any changes in law or the interpretation thereof that may occur or become effective after such date.

## **UNDERWRITING**

The Series 2015 Notes are being purchased by the Underwriter named on the cover of this Official Statement. The Note Purchase Agreement provides that the Underwriter will purchase all the Series 2015 Notes, if any are purchased, at a purchase price equal to the initial public offering prices set forth on the cover page hereof less an Underwriter’s discount of \$67,350.00. The obligation to make such purchase is subject to the terms and conditions set forth in the Note Purchase Agreement, including the approval of certain legal matters by counsel. The Underwriter may change the initial public offering prices from time to time. The Underwriter may offer and sell Series 2015 Notes to certain dealers (including dealers depositing Series 2015 Notes into investment trusts) and certain dealer banks acting as agents at prices lower than the public offering prices stated on the cover page hereof, and such public offering price also may be changed without prior notice, from time to time, by the Underwriter.

## **FINANCIAL STATEMENTS**

Included herein as Appendix C are the audited financial statements (and reports with respect thereto) of the Issuer as of June 30, 2014, prepared by the office of the West Virginia State Auditor (the “State Auditor”). The financial statements have been included herein in reliance upon the reports of the preparers thereof as experts in auditing and accounting.

## **CONTINUING DISCLOSURE**

The Issuer has agreed to an undertaking (the “Undertaking”) for the benefit of the Registered Owners of the Series 2015 Notes to provide certain financial and operating information (the “Annual Financial Information”) not later than the last day of the fiscal year (presently ending June 30) immediately following the end of the Issuer’s fiscal year for which disclosure is due, commencing with

the report for the fiscal year ending June 30, 2016, and to provide notice of the occurrence of enumerated events, all as further described in the Continuing Disclosure Agreement to be entered by the Issuer in substantially the form attached as Appendix H hereto. The Annual Financial Information and each notice of enumerated events are required to be filed electronically by The Huntington National Bank, as dissemination agent on behalf of the Issuer, with the Electronic Municipal Markets Access system ("EMMA").

This continuing disclosure obligation is being undertaken by the Issuer to assist the Underwriter in complying with Rule 15c2-12 promulgated by the SEC. The Issuer has agreed to give notice in a timely manner to EMMA. However, any such failure will not constitute a default under the terms of the Ordinance or the Series 2015 Notes. Under the Continuing Disclosure Agreement, the sole remedy for such failure is to seek an order for specific performance. See "APPENDIX H-FORM OF CONTINUING DISCLOSURE AGREEMENT." Registered Owners may contact the Mayor of the Issuer at (304) 755-0705 for more information.

#### MISCELLANEOUS

So far as any statements made in this Official Statement involve matters of opinion or estimates, whether or not expressly stated, they are set forth as such and not as representations of fact, and no representation is made that any of such statements will be realized. Neither this Official Statement nor any statement which may have been made orally or in writing is to be construed as a contract or agreement with the purchasers or owners of the Series 2015 Notes.

Copies of the Ordinance, the Undertaking, the Act and other applicable documents may be obtained from the Issuer at the following address:

City of Nitro  
2009 20th Street  
Nitro, West Virginia 25143

or, during the period of offering the Series 2015 Notes, from the Underwriter. Ongoing financial information may be obtained from the Issuer at the address set forth above.

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This Official Statement has been duly approved and its execution and distribution authorized by the Issuer.

**CITY OF NITRO, WEST VIRGINIA**

By: /s/ *Dave Corbett*  
Mayor

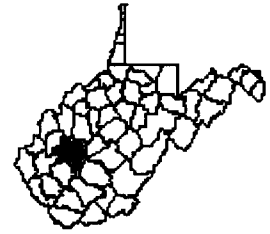
**APPENDIX A**

**KANAWHA COUNTY AND PUTNAM COUNTY, ECONOMIC AND DEMOGRAPHIC DATA**



## APPENDIX A – General Information (Kanawha County)

Sources include: US Census  
City-Data.com  
www.stats.indiana.edu/



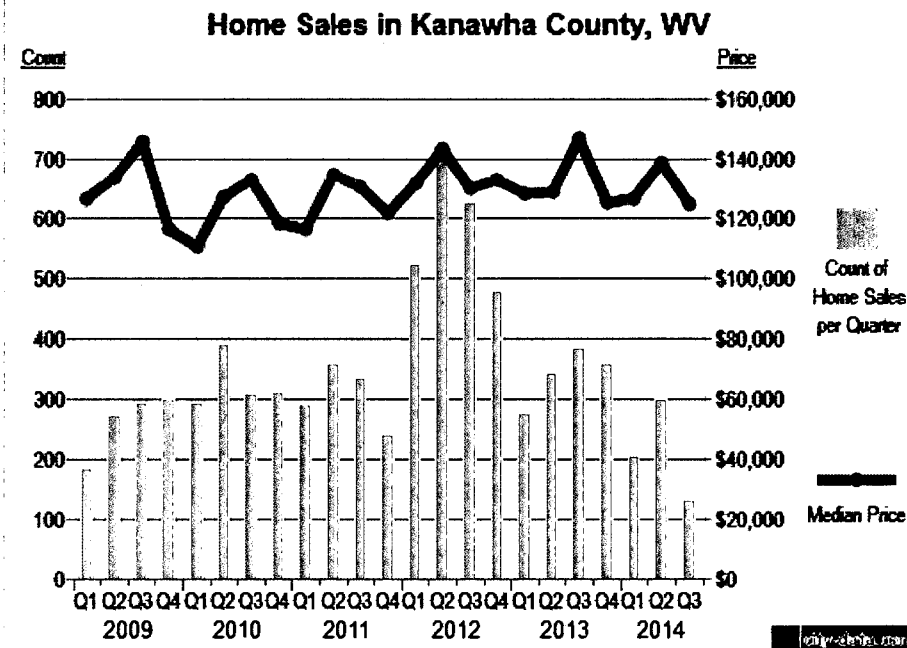
### OVERVIEW

**Kanawha County** is one of about 3,141 counties and county equivalents in the United States. It has 901.6 sq. miles in land area and a population density of 212.2 per square mile. On the most recent census form, 98.0% of the population reported only one race, with 7.3% of these reporting African-American. The population of this county is 0.9% Hispanic (of any race). The average household size is 2.30 persons compared to an average family size of 2.80 persons.

In 2013 health care and social assistance was the largest of 20 major sectors. It had an average wage per job of \$46,169. Per capita income grew by 8.5% between 2003 and 2013 (adjusted for inflation).

People & Income Overview (By Place of Residence)	Value	U.S. Rank
Population (2013)	191,275	335
Growth (%) since 2010 Census	-0.9%	1996
Households (2013)	82,756	294
Labor Force (persons) (2013)	88,295	357
Unemployment Rate (2013)	5.7	2207
Per Capita Personal Income (2013)	\$44,817	707
Median Household Income (2013)	\$45,858	1356
Poverty Rate (2013)	15.3	1749
H.S. Diploma or More - % of Adults 25+ (2013 ACS 5yr)	87.9	1,186
Bachelor's Deg. or More - % of Adults 25+ (2013 ACS 5yr)	25.0	668

### Housing:



## US Census Bureau - Quick Facts

### Kanawha County, West Virginia

People QuickFacts	Kanawha County	West Virginia
Population, 2014 estimate	190,223	1,850,326
Population, 2010 (April 1) estimates base	193,058	1,853,033
Population, percent change - April 1, 2010 to July 1, 2014	-1.5%	-0.1%
Population, 2010	193,063	1,852,994
Persons under 5 years, percent, 2014	5.6%	5.5%
Persons under 18 years, percent, 2014	20.5%	20.5%
Persons 65 years and over, percent, 2014	18.1%	17.8%
Female persons, percent, 2014	51.8%	50.6%
White alone, percent, 2014 (a)	88.9%	93.7%
Black or African American alone, percent, 2014 (a)	7.6%	3.6%
American Indian and Alaska Native alone, percent, 2014 (a)	0.2%	0.2%
Asian alone, percent, 2014 (a)	1.2%	0.8%
Native Hawaiian and Other Pacific Islander alone, percent, 2014 (a)	Z	Z
Two or More Races, percent, 2014	2.2%	1.6%
Hispanic or Latino, percent, 2014 (b)	1.1%	1.5%
White alone, not Hispanic or Latino, percent, 2014	88.0%	92.5%
Living in same house 1 year & over, percent, 2009-2013	87.5%	88.1%
Foreign born persons, percent, 2009-2013	1.5%	1.4%
Language other than English spoken at home, pct age 5+, 2009-2013	2.1%	2.4%
High school graduate or higher, percent of persons age 25+, 2009-2013	87.9%	83.9%
Bachelor's degree or higher, percent of persons age 25+, 2009-2013	25.0%	18.3%
Veterans, 2009-2013	16,579	159,448
Mean travel time to work (minutes), workers age 16+, 2009-2013	21.7	25.5
Housing units, 2014	92,420	884,605
Homeownership rate, 2009-2013	71.0%	73.4%
Housing units in multi-unit structures, percent, 2009-2013	17.8%	12.0%
Median value of owner-occupied housing units, 2009-2013	\$101,600	\$98,500
Households, 2009-2013	82,756	741,390
Persons per household, 2009-2013	2.29	2.43
Per capita money income in past 12 months (2013 dollars), 2009-2013	\$28,174	\$22,966
Median household income, 2009-2013	\$46,085	\$41,043

<b>Business QuickFacts</b>	<b>Kanawha County</b>	<b>West Virginia</b>
Private nonfarm establishments, 2013	5,185	37,573 <sup>1</sup>
Private nonfarm employment, 2013	87,931	575,987 <sup>1</sup>
Private nonfarm employment, percent change, 2012-2013	0.4%	-0.6% <sup>1</sup>
Nonemployer establishments, 2013	9,314	88,202
Total number of firms, 2007	14,196	120,381
Black-owned firms, percent, 2007	2.5%	S
American Indian- and Alaska Native-owned firms, percent, 2007	F	S
Asian-owned firms, percent, 2007	1.6%	1.3%
Native Hawaiian and Other Pacific Islander-owned firms, percent, 2007	F	0.0%
Hispanic-owned firms, percent, 2007	S	0.7%
Women-owned firms, percent, 2007	26.3%	28.1%
Manufacturers shipments, 2007 (\$1000)	D	25,080,573
Merchant wholesaler sales, 2007 (\$1000)	1,726,956	11,036,467
Retail sales, 2007 (\$1000)	2,947,318	20,538,829
Retail sales per capita, 2007	\$15,429	\$11,340
Accommodation and food services sales, 2007 (\$1000)	414,905	2,553,258
Building permits, 2014	296	2,677

<b>Geography QuickFacts</b>	<b>Kanawha County</b>	<b>West Virginia</b>
Land area in square miles, 2010	901.59	24,038.21
Persons per square mile, 2010	214.1	77.1
FIPS Code	039	54
Metropolitan or Micropolitan Statistical Area	Charleston, WV Metro Area	

1: Includes data not distributed by county.

(a) Includes persons reporting only one race.

(b) Hispanics may be of any race, so also are included in applicable race categories.

D: Suppressed to avoid disclosure of confidential information

F: Fewer than 25 firms

FN: Footnote on this item for this area in place of data

NA: Not available

S: Suppressed; does not meet publication standards

X: Not applicable

Z: Value greater than zero but less than half unit of measure shown

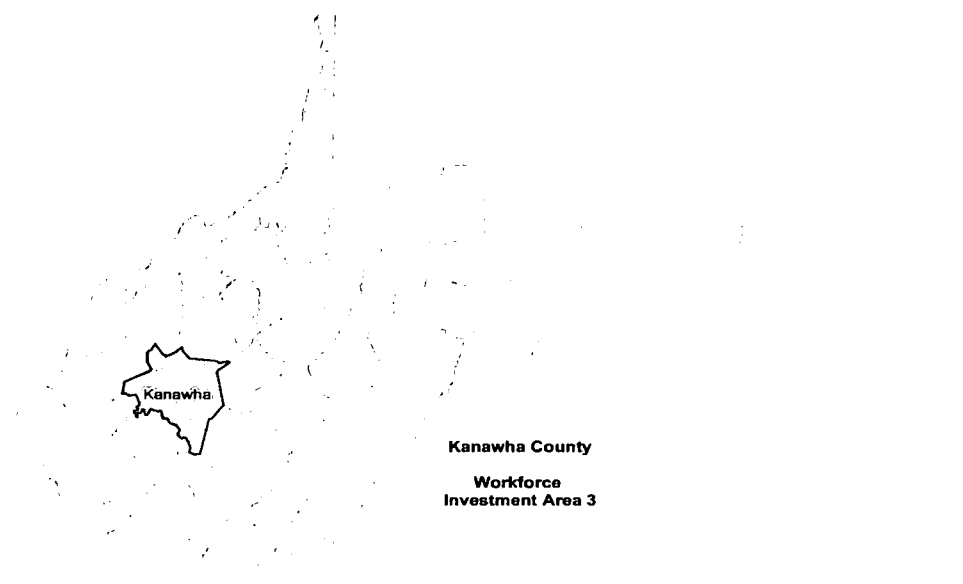
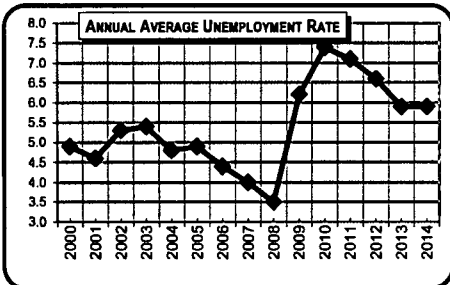
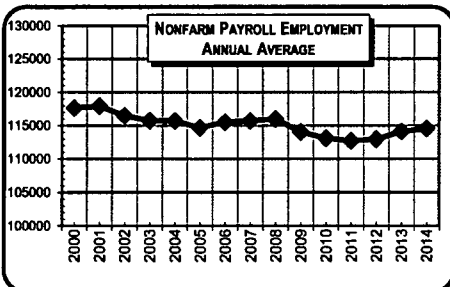
Source U.S. Census Bureau: State and County QuickFacts. Data derived from Population Estimates, American Community Survey, Census of Population and Housing, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits  
Last Revised: Wednesday, 23-Sep-2015 13:29:32 EDT

## Kanawha County

Employment and Wages Annual Averages	2014			2013		
	Emp.	Total Wages	Avg. Annual Wage	Emp.	Total Wages	Avg. Annual Wage
Total, All Industries	103,755	4,534,839,861	43,707	104,117	4,439,827,550	42,643
Total, Private Sector	82,357	3,606,715,381	43,794	82,794	3,523,855,172	42,562
Natural Resources and Mining	2,314	185,248,645	80,056	2,096	169,906,718	81,062
Construction	4,462	251,005,976	56,254	4,464	242,722,580	54,373
Manufacturing	3,321	218,725,885	65,861	3,322	213,875,897	64,382
Trade, Transportation, and Utilities	18,568	712,681,654	38,382	18,870	713,695,029	37,822
42 Wholesale trade	3,333	182,344,595	54,709	3,511	190,760,302	54,332
44-45 Retail trade	11,909	307,326,435	25,806	12,091	308,841,809	25,543
48-49 Transportation and warehousing	2,710	166,349,210	61,383	2,654	158,172,349	59,598
Information	1,670	90,554,895	54,224	1,568	81,227,244	51,803
Financial Activities	5,869	324,177,029	55,235	6,007	314,404,409	52,340
Professional and Business Services	13,154	619,484,584	47,095	13,240	607,750,922	45,903
Education and Health Services	19,491	923,324,172	47,372	19,516	896,833,759	45,954
Leisure and Hospitality	10,067	175,122,842	17,396	10,214	175,314,880	17,164
Other Services	3,441	106,389,699	30,918	3,497	108,123,734	30,919
Government	21,398	928,124,480	43,374	21,323	915,972,378	42,957
Federal Government	2,071	142,652,703	68,881	2,052	139,336,972	67,903
State Government	11,016	486,993,289	44,208	11,031	473,346,997	42,911
Local Government	8,311	298,478,488	35,914	8,240	303,288,409	36,807
Demographics (2010 Census)	Top 10 Employers					
Total Population 2014	190,223	March 2014				
Total Population 2000	199,714	1	Charleston Area Medical Center, Inc.			
Total Population 1990	207,619	2	Kanawha County Board of Education			
Total Population 1980	231,414	3	Herbert J. Thomas Memorial Hospital Association			
Total Population 1970	229,515	4	Wal-Mart Stores, Inc.			
Sex and Age		5	West Virginia Department of Highways			
Male	92,381	6	The Kroger Company			
Female	99,930	7	City of Charleston Municipality			
Ages 14 and below	32,859	8	US Postal Service			
Ages 15 to 19	10,901	9	West Virginia Department of Health and Human Resources			
Ages 20 to 24	10,961	10	West Virginia Department of Administration			
Ages 25 to 34	23,788	Worker Commuting Patterns				
Ages 35 to 44	23,668		Total	Male	Female	
Ages 45 to 54	28,500	Number	85,419	44,128	41,291	
Ages 55 to 64	28,808	Worked in state of residence:	84,514	43,385	41,129	
Ages 65 and older	32,826	Worked in county of residence	76,559	37,602	38,957	
Median Age	42.3	Worked outside county of residence	7,955	5,783	2,172	
Race		Worked outside state of residence	905	743	162	
White	181,169	2010 American Community Survey 5-Year Estimates				
Black or African American	10,407	Income				
American Indian and Alaska Native	9,540	Total Personal Income (000)	2013		\$8,572,301	
Asian	2,684	Per capita Personal Income	2013		\$44,817	
Native Hawaiian and Other Pacific	143	Household Income*				
Some other race	409	Less than \$10,000			5,970	
Two or more races	11,209	\$10,000 to \$14,999			5,560	
		\$15,000 to \$24,999			11,063	
		\$25,000 to \$34,999			8,484	
		\$35,000 to \$49,999			13,572	
		\$50,000 to \$74,999			15,413	
		\$75,000 to \$99,999			9,532	
		\$100,000 to \$149,000			7,928	
		\$150,000 or more			5,234	
		Median Household Income (2013)			46,085	
		US Census Bureau				
Data Sources						
<a href="http://lmi.workforcewv.org">http://lmi.workforcewv.org</a>						
<a href="http://bls.gov">http://bls.gov</a>						
<a href="http://census.gov">http://census.gov</a>						
<a href="http://bea.gov">http://bea.gov</a>						

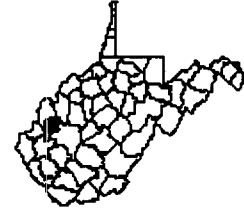
Labor Force Statistics		Kanawha Charleston														
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Civilian Labor Force		97,310	96,760	94,370	91,510	90,930	90,680	91,500	92,040	92,750	92,520	92,600	91,700	91,460	89,550	88,300
Total Employment		92,510	92,350	89,370	86,590	86,590	86,270	87,480	88,360	89,480	86,740	85,770	85,210	85,420	84,260	83,110
Total Unemployment		4,810	4,410	5,000	4,920	4,340	4,410	4,010	3,680	3,260	5,780	6,840	6,490	6,040	5,290	5,190
Unemployment Rate		4.9	4.6	5.3	5.4	4.8	4.9	4.4	4.0	3.5	6.2	7.4	7.1	6.6	5.9	5.9
Total Nonfarm Payroll Employment by Industry		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Total Nonfarm Payroll Employment		117,670	117,930	116,510	115,740	115,700	114,670	115,520	115,710	115,990	114,020	113,120	112,720	112,960	114,120	114,570
Total Private		96,330	96,060	94,250	93,380	93,330	92,110	93,490	93,690	94,060	91,990	91,200	90,870	91,130	91,990	92,330
Goods Producing		14,420	14,270	13,200	12,430	12,410	11,920	12,470	12,240	12,230	11,160	10,620	10,600	10,220	10,180	10,520
Mining and Logging		1,920	2,340	2,250	2,210	2,330	2,530	2,920	3,000	3,140	2,860	**	**	**	**	**
Construction		4,820	4,930	4,850	4,660	4,780	4,730	5,140	5,180	5,210	4,790	4,940	4,810	4,540	4,750	4,830
Manufacturing		7,690	7,000	6,100	5,560	5,300	4,660	4,410	4,070	3,880	3,510	**	**	**	**	**
Service Providing		103,250	103,660	103,310	103,310	103,290	102,740	103,050	103,470	103,760	102,850	102,500	102,120	102,750	103,940	104,050
Private Service Providing		81,910	81,800	81,060	80,950	80,920	80,190	81,020	81,450	81,830	80,830	80,580	80,270	80,910	81,810	81,810
Trade, Transportation and Util		22,830	21,950	21,490	21,110	21,220	21,100	21,230	21,340	20,960	19,960	19,380	19,290	19,250	19,230	18,940
Wholesale Trade		4,450	4,470	4,320	4,170	4,100	4,220	4,420	4,430	4,140	3,940	3,710	3,620	3,540	3,680	3,570
Retail Trade		14,030	13,330	13,180	13,060	13,240	12,940	12,850	12,850	12,640	12,210	12,000	12,050	12,210	12,080	11,900
Transport, Warehousing & Util		4,350	4,150	3,990	3,880	3,880	3,940	3,960	4,060	4,180	3,810	3,670	3,610	3,510	3,470	3,470
Information		3,670	3,580	3,270	3,030	2,880	2,600	2,410	2,370	2,300	2,020	1,790	1,580	1,550	1,580	1,710
Financial Activities		7,300	7,400	7,290	7,600	7,110	6,650	7,190	7,100	7,140	7,080	6,940	6,790	6,950	7,270	7,450
Profess and Business Serv		13,940	13,300	12,790	12,160	12,300	12,240	12,580	12,670	12,820	12,500	13,010	13,270	13,490	13,870	14,150
Education and Health Serv		15,770	16,720	17,280	17,670	18,170	18,260	18,350	18,720	19,240	19,910	20,360	20,360	20,270	20,460	20,330
Leisure and Hospitality		9,600	9,530	9,650	10,170	9,980	10,120	10,140	10,080	10,150	10,190	10,060	10,030	10,240	10,220	10,070
Other Services		8,810	9,320	9,300	9,210	9,260	9,220	9,130	9,170	9,230	9,180	9,050	8,960	9,160	9,190	9,160
Total Government		21,340	21,860	22,250	22,360	22,370	22,550	22,030	22,030	21,930	22,020	21,920	21,850	21,830	22,130	22,240
Federal		2,470	2,400	2,510	2,510	2,430	2,430	2,370	2,460	2,360	2,240	2,070	2,000	2,020	2,050	2,070
State		10,640	11,260	11,440	11,530	11,560	11,670	11,040	10,970	11,070	11,200	11,300	11,220	11,240	11,210	11,200
Local		8,230	8,210	8,300	8,320	8,380	8,450	8,620	8,600	8,500	8,590	8,550	8,630	8,570	8,870	8,980

Benchmark 2014 \*\* not available



## APPENDIX A – General Information (Putnam County)

Sources include: US Census, City-Data.com, WorkforceWV  
www.stats.indiana.edu/



### Overview:

Putnam County is one of about 3,141 counties and county equivalents in the United States. It has 345.7 sq. miles in land area and a population density of 163.9 per square mile. On the most recent census form, 98.9% of the population reported only one race, with 0.9% of these reporting African-American. The population of this county is 0.9% Hispanic (of any race). The average household size is 2.50 persons compared to an average family size of 2.90 persons.

In 2013 construction was the largest of 20 major sectors. It had an average wage per job of \$57,588. Per capita income grew by 20.7% between 2003 and 2013 (adjusted for inflation).

People & Income Overview (By Place of Residence)	Value	Industry Overview (2013) (By Place of Work)	Value
Population (2013)	56,650	Covered Employment	19,822
Growth (%) since 2010	2.1%	Avg wage per job	\$45,050
Census			
Households (2013)	21,391	Manufacturing - % all jobs in County	11.0%
Labor Force (persons) (2013)	26,898	Avg wage per job	\$62,169
Unemployment Rate (2013)	5.3%	Transportation & Warehousing - % all jobs in County	5.9%
Per Capita Personal Income (2013)	\$42,903	Avg wage per job	\$44,610
Median Household Income (2013)	\$56,102	Health Care, Social Assist. - % all jobs in County	8.9%
Poverty Rate (2013)	11.0	Avg wage per job	\$39,153
H.S. Diploma or More - % of Adults 25+ (2013 ACS 5yr)	89.3	Finance and Insurance - % all jobs in County	2.6%
Bachelor's Deg. or More - % of Adults 25+ (2013 ACS 5yr)	24.0	Avg wage per job	\$51,800

### US Census Bureau – Putnam County, WV

People QuickFacts	Putnam County	West Virginia
Population, 2014 estimate	NA	1,850,326
Population, 2013 estimate	56,650	1,853,595
Population, 2010 (April 1) estimates base	55,486	1,853,033
Population, percent change - April 1, 2010 to July 1, 2014	NA	-0.1%
Population, percent change - April 1, 2010 to July 1, 2013	2.1%	Z
Population, 2010	55,486	1,852,994
Persons under 5 years, percent, 2013	5.7%	5.5%
Persons under 18 years, percent, 2013	23.3%	20.6%
Persons 65 years and over, percent, 2013	15.8%	17.3%
Female persons, percent, 2013	50.8%	50.6%

**US Census Bureau – continued**

White alone, percent, 2013 (a)	96.7%	93.8%
Black or African American alone, percent, 2013 (a)	1.1%	3.6%
American Indian and Alaska Native alone, percent, 2013 (a)	0.2%	0.2%
Asian alone, percent, 2013 (a)	0.9%	0.8%
Native Hawaiian and Other Pacific Islander alone, percent, 2013 (a)	Z	Z
Two or More Races, percent, 2013	1.1%	1.5%
Hispanic or Latino, percent, 2013 (b)	1.0%	1.4%
White alone, not Hispanic or Latino, percent, 2013	95.8%	92.7%
Living in same house 1 year & over, percent, 2009-2013	93.9%	88.1%
Foreign born persons, percent, 2009-2013	1.3%	1.4%
Language other than English spoken at home, pct age 5+, 2009-2013	1.8%	2.4%
High school graduate or higher, percent of persons age 25+, 2009-2013	89.3%	83.9%
Bachelor's degree or higher, percent of persons age 25+, 2009-2013	24.0%	18.3%
Veterans, 2009-2013	4,780	159,448
Mean travel time to work (minutes), workers age 16+, 2009-2013	25.5	25.5
Housing units, 2013	23,575	879,449
Homeownership rate, 2009-2013	84.7%	73.4%
Housing units in multi-unit structures, percent, 2009-2013	7.5%	12.0%
Median value of owner-occupied housing units, 2009-2013	\$142,900	\$98,500
Households, 2009-2013	21,391	741,390
Persons per household, 2009-2013	2.61	2.43
Per capita money income in past 12 months (2013 dollars), 2009-2013	\$27,957	\$22,966
Median household income, 2009-2013	\$54,854	\$41,043
Persons below poverty level, percent, 2009-2013	11.3%	17.9%

<b>Business QuickFacts</b>	<b>Putnam County</b>	<b>West Virginia</b>
Private nonfarm establishments, 2012	1,218	37,906 <sup>1</sup>
Private nonfarm employment, 2012	16,583	579,583 <sup>1</sup>
Private nonfarm employment, percent change, 2011-2012	5.3%	2.0% <sup>1</sup>
Nonemployer establishments, 2012	2,939	89,213
Total number of firms, 2007	3,475	120,381
Black-owned firms, percent, 2007	F	S
American Indian- and Alaska Native-owned firms, %, 2007	F	S
Asian-owned firms, percent, 2007	1.4%	1.3%
Native Hawaiian and Other Pacific Islander-owned firms, percent, 2007	F	0.0%

Hispanic-owned firms, percent, 2007	F	0.7%
Women-owned firms, percent, 2007	26.9%	28.1%

Manufacturers shipments, 2007 (\$1000)	D	25,080,573
Merchant wholesaler sales, 2007 (\$1000)	541,706	11,036,467
Retail sales, 2007 (\$1000)	589,769	20,538,829
Retail sales per capita, 2007	\$10,725	\$11,340
Accommodation and food services sales, 2007 (\$1000)	61,640	2,553,258
Building permits, 2013	135	2,575

**Geography QuickFacts**

	<b>Putnam County</b>	<b>West Virginia</b>
Land area in square miles, 2010	345.67	24,038.21
Persons per square mile, 2010	160.5	77.1
FIPS Code	079	54
Metropolitan or Micropolitan Statistical Area	Huntington- Ashland, WV-KY-OH Metro Area	

1: Includes data not distributed by county

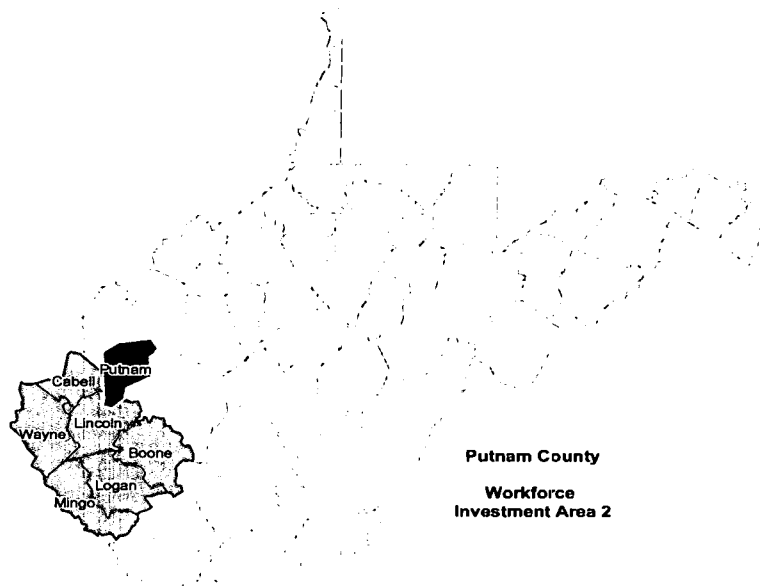
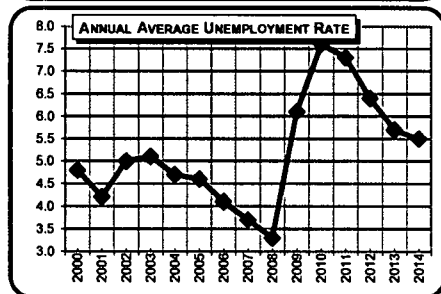
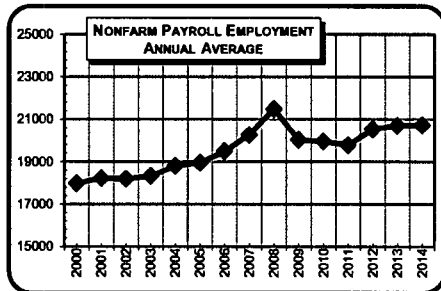


## Putnam County

	2014			2013		
	Emp.	Total Wages	Avg. Annual Wage	Emp.	Total Wages	Avg. Annual Wage
Total, All Industries	19,893	911,469,488	45,819	19,860	890,657,255	44,847
Total, Private Sector	17,631	814,783,782	46,213	17,630	796,921,903	45,203
Natural Resources and Mining	109	4,198,882	38,522	118	4,907,365	41,588
Construction	2,263	132,047,151	58,350	2,440	140,348,557	57,520
Manufacturing	2,220	140,338,961	63,216	2,168	134,476,844	62,028
Trade, Transportation, and Utilities	5,445	251,896,754	46,262	5,497	240,635,622	43,776
42 Wholesale trade	1,599	89,395,993	55,907	1,619	88,827,843	54,866
44-45 Retail trade	2,309	63,717,788	27,595	2,267	59,434,676	26,217
48-49 Transportation and warehousing	967	49,605,903	51,299	1,024	46,123,580	45,043
Information	218	11,947,696	54,806	216	11,515,352	53,312
Financial Activities	887	45,225,675	50,987	814	40,147,323	49,321
Professional and Business Services	2,183	111,830,953	51,228	2,118	111,578,071	52,681
Education and Health Services	1,829	74,047,566	40,485	1,800	70,177,186	38,987
Leisure and Hospitality	1,912	26,085,216	13,643	1,872	25,181,942	13,452
Other Services	565	17,164,928	30,380	587	17,953,641	30,585
Government	2,262	96,685,706	42,743	2,230	93,735,352	42,034
Federal Government	194	10,706,907	55,190	174	9,466,537	54,405
State Government	287	9,917,348	34,555	271	9,231,303	34,064
Local Government	1,781	76,061,451	42,707	1,785	75,037,512	42,038
<b>Demographics (2010 Census)</b>		<b>Top 10 Employers</b>				
Total Population 2014	56,770	<b>March 2014</b>				
Total Population 2000	51,734	1	Putnam County Board of Education			
Total Population 1990	42,835	2	Toyota Motor Manufacturing, West Virginia, Inc.			
Total Population 1980	38,181	3	Charleston Area Medical Center, Inc.			
Total Population 1970	27,626	4	Diamond Electric Manufacturing Corporation			
<b>Sex and Age</b>		5	Appalachian Power Company			
Male	27,466	6	Rite Aid of West Virginia, Inc.			
Female	28,567	7	Wal-Mart Stores, Inc.			
Ages 14 and below	10,861	8	Work Force, Inc.			
Ages 15 to 19	3,365	9	Brand Energy Services LLC			
Ages 20 to 24	2,570	10	American Electric Power Service Corporation			
Ages 25 to 34	6,451	<b>Worker Commuting Patterns</b>				
Ages 35 to 44	7,839		<i>Total</i>	<i>Male</i>	<i>Female</i>	
Ages 45 to 54	8,500		29,582	15,867	13,715	
Ages 55 to 64	8,019		Worked in state of residence:	29,077	15,503	
Ages 65 and older	8,428		Worked in county of residence	24,477	12,215	
Median Age	42		Worked outside county of residence	4,600	3,288	
<b>Race</b>			Worked outside state of residence	505	364	
White	54,870	<i>2010 American Community Survey 5-Year Estimates</i>				
Black or African American	841	<b>Income</b>				
American Indian and Alaska Native	322	Total Personal Income		2013	2,430,440	
Asian	537	Per capita Personal Income		2013	\$42,903	
Native Hawaiian and Other Pacific	0	<b>Household Income*</b>				
Some other race	153	<i>Number</i>				
Two or more races	690	Less than \$10,000				
<b>Web Sources</b>		\$10,000 to \$14,999				
<a href="http://lmi.workforcewv.org">http://lmi.workforcewv.org</a>		\$15,000 to \$24,999				
<a href="http://bls.gov">http://bls.gov</a>		\$25,000 to \$34,999				
<a href="http://census.gov">http://census.gov</a>		\$35,000 to \$49,999				
<a href="http://bea.gov">http://bea.gov</a>		\$50,000 to \$74,999				
		\$75,000 to \$99,999				
		\$100,000 to \$149,000				
		\$150,000 or more				
		Median Household Income (2013)				
		\$54,854				
		*US Census Bureau				

County		Putnam													
County Seat:		Winfield													
Labor Force Statistics	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Civilian Labor Force	26,220	26,240	26,110	25,740	26,080	26,470	27,140	27,470	27,980	27,920	26,390	26,300	26,400	26,000	25,810
Total Employment	24,960	25,150	24,820	24,440	24,870	25,260	26,020	26,450	27,060	26,230	24,390	24,380	24,710	24,530	24,390
Total Unemployment	1,260	1,100	1,300	1,300	1,220	1,210	1,120	1,020	920	1,690	2,000	1,920	1,690	1,470	1,430
Unemployment Rate	4.8	4.2	5.0	5.1	4.7	4.6	4.1	3.7	3.3	6.1	7.6	7.3	6.4	5.7	5.5
Total Nonfarm Payroll Employment by Industry	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Total Nonfarm Payroll Employment	17,970	18,230	18,190	18,320	18,800	18,950	19,490	20,260	21,470	20,030	19,950	19,780	20,530	20,700	20,720
Total Private	15,650	15,900	15,770	15,900	16,410	16,600	17,040	17,850	19,050	17,510	17,380	17,240	17,950	18,280	18,270
Goods Producing	4,290	4,370	4,320	4,220	4,680	4,630	4,850	5,180	5,530	4,480	4,330	4,100	4,490	4,870	4,810
Mining and Logging	60	40	70	30	30	40	60	80	100	90	**	**	**	**	**
Construction	2,090	2,080	1,900	2,090	2,670	2,690	2,810	2,980	3,260	2,340	2,340	2,050	2,320	2,630	2,530
Manufacturing	2,150	2,260	2,360	2,110	1,980	1,900	1,990	2,130	2,180	2,050	**	**	**	**	**
Service Providing	13,680	13,860	13,870	14,100	14,120	14,320	14,640	15,080	15,940	15,560	15,620	15,680	16,040	15,830	15,920
Private Service Providing	11,360	11,530	11,440	11,680	11,730	11,970	12,180	12,670	13,510	13,030	13,050	13,140	13,460	13,410	13,470
Trade, Transportation and Util	5,440	5,360	5,250	5,400	5,370	5,410	5,270	5,340	5,660	5,420	5,260	5,350	5,590	5,670	5,720
Wholesale Trade	1,440	1,480	1,500	1,590	1,670	1,670	1,580	1,520	1,630	1,600	1,520	1,570	1,670	1,690	1,700
Retail Trade	2,040	1,960	1,890	1,930	1,890	1,970	1,990	2,070	2,260	2,200	2,190	2,200	2,250	2,270	2,310
Transport, Warehousing & Util	1,960	1,920	1,860	1,880	1,810	1,770	1,710	1,760	1,770	1,610	1,540	1,580	1,660	1,710	1,710
Information	210	210	250	250	200	260	320	370	370	340	**	**	**	**	**
Financial Activities	750	710	680	680	760	830	840	860	970	920	1,120	880	810	870	930
Profess and Business Serv	1,260	1,370	1,400	1,350	1,240	1,220	1,440	1,730	1,930	1,630	1,630	1,800	1,940	2,290	2,400
Education and Health Serv	1,140	1,260	1,230	1,340	1,410	1,430	1,440	1,500	1,650	1,820	1,770	1,820	1,820	1,830	1,850
Leisure and Hospitality	1,490	1,520	1,490	1,470	1,550	1,600	1,650	1,680	1,720	1,690	1,710	1,760	1,820	1,870	1,900
Other Services	1,060	1,100	1,150	1,180	1,190	1,210	1,220	1,190	1,220	1,210	1,180	1,210	1,240	670	460
Total Government	2,320	2,330	2,420	2,420	2,390	2,350	2,450	2,410	2,420	2,530	2,570	2,540	2,580	2,420	2,450
Federal	170	150	150	140	130	140	180	190	190	240	240	180	180	170	190
State	330	330	340	360	330	210	230	230	210	190	190	220	260	270	290
Local	1,820	1,820	1,930	1,930	1,940	2,000	2,050	2,000	2,030	2,100	2,140	2,140	2,140	1,970	1,970

Benchmark 2013 \*\* not available



## APPENDIX B

### THE SYSTEM AND THE UTILITY BOARD

The City's wastewater operation is named the "Nitro Regional Wastewater Utility". The Utility has operated a sewerage collection and treatment system since 1959.

#### *System Overview (PSC Annual Reports)*

<u>Fiscal Year (June 30)</u>	<u>Gross Annual Revenues</u>	<u>Gross Plant in Service</u>	<u>Number of Active Customers</u>
2010	\$1,830,487	\$19,046,101	4,213
2011	\$1,881,046	\$20,723,979	4,211
2012	\$1,904,357	\$21,558,748	4,282
2013	\$1,910,386	\$21,677,959	4,170
2014	\$2,049,728	\$21,969,770	4,478
2015	\$2,144,525	\$22,419,703	4,502

The City owns, operates and maintains a wastewater treatment and collection system, extending throughout the City consisting of 1 treatment plant, 24 pumping stations and 305,000 feet of wastewater mains. The primary treatment plant has a capacity of 1.875 MGD. The plant discharges its treated effluent to the Kanawha River.

#### *Customers Served*

According to the PSC Annual Report, as of June 30, 2015, the Utility provides service to approximately 4,502 customers.

	<u>Customers At Year End</u>
Residential	4,236
Commercial	241
Industrial	7
Public Authority	17
Resale	<u>1</u>
	4,502

#### *Sewer Service Area*

The system area includes approximately 9,000 people in the City of Nitro, the communities of Rock Branch and Poca River as well as the Putnam Public Service District. The service area is located in both Kanawha and Putnam Counties.

#### **Mayor/Council**

The City is governed by an elected Mayor and Council. The Mayor and Council members, terms and occupations are listed below:

<u>Mayor/Council</u>	<u>Term</u>	<u>Occupation</u>
Dave Casebolt, Mayor	7/01/12 to 6/30/16	Real Estate Agent
Rita Cox, Recorder	7/01/12 to 6/30/16	Business Owner
John Young, Treasurer	Appointed	Business Owner, CPA
John Montgomery, Council at Large	2/19/13 to 6/30/16	Attorney
Brenda Tyler, Council at Large	7/01/12 to 6/30/16	Retired

Bill Javins, Council at Large	7/01/12 to 6/30/16	Real Estate Agent
Al Walls, Council Ward 1	7/01/12 to 6/30/16	Retired
Bill Racer, Council Ward 2	7/01/12 to 6/30/16	Retired
Laurie Elkins, Council Ward 3	7/01/12 to 6/30/16	Nurse Anesthetist
Andy Shamblin, Council Ward 4	7/01/12 to 6/30/16	School Teacher

The City generally employs 82 full-time employees.

**Utility Board**

Pursuant to the Act and the Board Ordinance, the Utility is operated by a Utility Board appointed by the Council. Utility Board members include Dave Casebolt, Chairman, Rich Hively, Kim Painter, Harry Miller and Steve Boggs, P.E. The Utility employs 11 full-time employees.

**Past Projects**

The City is committed to continued improvements in the operation of the wastewater system. The most recently completed improvement was a 2012 project for approximately \$3,000,000 consisting of:

1. New head works at the treatment plant
2. New garage/maintenance facility at treatment plant
3. Replaced pump station # 7
4. New master flowmeter at plant
5. Telemetry for 2 pump stations
6. Secondary tanks sand blasted and painted at plant
7. Security cameras installed at plant
8. New collector maintenance truck

**Customer Statistics**

The average number of customers for the past five Fiscal Years:

<u>Fiscal Year</u> <u>ending June 30</u>	<u>Sewer</u> <u>Customers</u>
2011	4,211
2012	4,282
2013	4,170
2014	4,478
2015	4,502

In addition to its residential and commercial customers, the City treats the wastewater from the Putnam Public Service District (located in Putnam County directly across the Kanawha River from the City). Under an agreement with the Putnam PSD, the Utility has reserved a capacity of 250,000 gallons/day of the Utility’s 1.875 MGD capacity.

The following table sets forth the ten largest customers of the Utility for the fiscal year ended June 30, 2015.

- 
1. Putnam PSD
  2. Better Foods
  3. Cross Road Village Apartments
  4. Putnam Co. Board of Education
  5. Pilot Travel Center
  6. Poca River Hunt and Fish Club
  7. Village on Park
  8. John Cox (private)

- 9. Kingsway Christian Church
- 10. Rio Grande

***Current Sewer Rates***

CITY OF NITRO, a municipal corporation OF NITRO, WEST VIRGINIA  
 RATES, RULES *AND* REGULATIONS FOR FURNISHING  
 SEWERAGE AND SEWAGE DISPOSAL SERVICE  
 at Nitro and vicinity, Kanawha and Putnam Counties  
 Filed with THE PUBLIC SERVICE COMMISSION of WEST VIRGINIA

Issued January 22, 2014  
 Effective for service rendered on and after January 3, 2014 or as otherwise provided herein  
 Adopted by City Council on November 19, 2013.  
 Issued by CITY OF NITRO, a municipal corporation

**RULES AND REGULATIONS**

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

**APPLICABILITY**

Applicable inside and outside the corporate limits of the City of Nitro

**AVAILABILITY OF SERVICE**

Available for sanitary sewer service

**PHASE I - RATES EFFECTIVE ON AND AFTER FEBRUARY 1, 2013 THROUGH FEBRUARY 1, 2014**

**RATE**

First	2,000 gallons	used per month	\$10.31	per 1,000 gallons
Next	3,000 gallons	used per month	\$ 8.65	per 1,000 gallons
Next	25,000 gallons	used per month	\$ 6.72	per 1,000 gallons
All Over	30,000 gallons	used per month	\$ 6.04	per 1,000 gallons

**MINIMUM RATE**

\$20.63 based upon 2,000 gallons

**AVERAGE BILL:**

4,000 gallons \$37.93

**RESIDENTIAL FLAT RATE**

Each un-metered residential customer shall be charged a flat rate of \$39.49 per month.

**PHASE II - RATES EFFECTIVE ON AND AFTER FEBRUARY 2, 2014**

**RATE**

First	2,000 gallons	used per month	\$11.04	per 1,000 gallons
Next	3,000 gallons	used per month	\$ 9.26	per 1,000 gallons
Next	25,000 gallons	used per month	\$ 7.19	per 1,000 gallons
All Over	30,000 gallons	used per month	\$ 6.47	per 1,000 gallons

MINIMUM RATE

\$22.07 based upon 2,000 gallons

AVERAGE BILL:

4,000 gallons \$40.59

RESIDENTIAL FLAT RATE

Each un-metered residential customer shall be charged a flat rate of \$42.26 per month.

SECURITY DEPOSIT

\$70.00\*

\*A security deposit shall be collected from all new applicants for service to secure the payment of service rates, fees and charges in the event they become delinquent. 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 until another deposit is collected. After twelve months of prompt payment history, a customer's deposit shall either be returned to the customer or credited to the customer's account, in either case with interest at such rate as may be prescribed by the Public Service Commission: Provided, that where the customer is a tenant, the deposit need not be returned until the customer discontinues service.

SERVICE CONNECTION INSPECTION FEE

\$25.00

SERVICE CONNECTION (TAP) FEE

\$400.00

DELAYED PAYMENT PENALTY

The above schedule is net. Any bill not paid in full within twenty (20) days, ten percent (10%) will be added to the net amount thereof. This delayed payment penalty is not interest and is only to be collected once for each bill where appropriate.

DISCONNECT FEE

\$20.00

The above disconnect fee is applicable when the Nitro Regional Waste Water Utility requests that a customer's water service be disconnected for non-payment of the sewer bill, whether or not such service is actually disconnected.

RECONNECT FEE

\$20.00

The above reconnect fee is applicable when a customer's water service is disconnected for nonpayment of the sewer bill, and such service is thereafter reconnected.

INTEREST

In the event any bill is not paid within 30 days, interest on the amount of such bill will be charged at the rate of ten per cent (10%) per annum.

### RETURN CHECK CHARGE

In the event any check, draft or order given in payment for a sanitary sewer bill is dishonored because of insufficient funds, a service charge of \$25.00 shall be imposed.

### SURCHARGE FOR SURFACE AND STORM WATER RUNOFF DISCHARGING INTO THE CITY OF NITRO COMBINED SEWER SYSTEM:

The charge for roof drains, downspouts, storm sewers, catch basins or similar facilities discharging surface and storm water runoff or other precipitation into the combined sewer system of the City of Nitro will be calculated on a basis of the following formula and will not be cumulative upon any metered rate for sewer service charges:

$$S = A \times P \times .6233 \times C$$

§ - The surcharge in Dollars

A - The Average Area Under Roof and the Area of Such Other Water Precipitation Collecting Surfaces Connected to the Combined Sewer System ("Water Collecting Area") in Square Feet.

P - The Measured Monthly Precipitation in Inches (as measured by the National Weather Service or other best available source of precipitation data).

.6233 - A conversion factor to convert A x P to thousand gallons.

C - The Applicable Rate Per Thousand Gallons of Metered Water Usage

The surcharge shall not apply to:

(a) Any owner, tenant, or occupant of each and every dwelling, structure or other improvement to property the construction of which is substantially completed on or before the effective date of the ordinance first enacting this exemption to the Surcharge ("existing Structures/Improvements");

(b) Any owner, tenant, or occupant of each and every dwelling, structure or other improvement to property (other than Replacement Structures/Improvements): (i) the construction of which is substantially completed after the effective date of the ordinance first enacting this exemption to the Surcharge ("New Structures/Improvements"); and (ii) for which the Water Collecting Area is 1,200 square feet or less; and

(c) Any owner, tenant, or occupant of each and every dwelling, structure or other improvement to property: (i) the construction of which is substantially completed after the effective date of the ordinance first enacting this exemption to the Surcharge; (ii) that was constructed to replace my Existing Structures/Improvements that were moved of the property, tom down or otherwise destroyed ("Replacement Structures/Improvements"); and (iii) which has a total Water Collecting Area that is not more than 1,200 square feet greater than the Water Collecting Area of the Existing Structure/Improvements being replaced.

Any owner, tenant, or occupant of New Structures/Improvements with a Water Collecting Area that exceeds 1,200 square feet, and any owner, tenant, or occupant of Replacement Structures/Improvements with a Water Collecting Area that is more than 1,200 square feet greater than the Water Collecting Area of the Existing Structures/Improvements being replaced, shall be subject to the Surcharge on only the square footage of the Water Collecting Areas that exceeds the respective applicable square footage exemptions set forth in paragraphs (b) and (c) above.

### POCA RIVER SERVICE AREA

On and after June, 2001, being the date on which sanitary sewerage service was available to the residents of the Poca River Service Area, the rates and charges for the use of, and services rendered to, such customers by the sanitary sewer system of the Nitro Regional Waste Water Utility shall be equal to the regularly enacted rates and charges for all other users of the system, plus a surcharge in the amount of \$13.69 per month.

The above surcharge shall be applicable for any owner, tenant, or occupant of each and every lot or parcel of land or building situated within Poca River Service Area and having any connection to the sanitary sewer system of the Nitro Regional Waste Water Utility.

**DISCHARGE/HAULER RATES**

On and after February 1, 2013, each hauler shall pay the charge as applicable below:

**NON-DOMESTIC/PRETREATED RATES:**

0	through 2000 gallons	\$ 75.00	per load
2001	through 4000 gallons	\$150.00	per load
4001	through 6000 gallons	\$250.00	per load
6001	through 8000 gallons	\$350.00	per load
All Over	8000 gallons	\$600.00	per load

**SEPTIC/PACKAGE PLANT RATES:**

0	through 2000 gallons	\$ 50.00	per load
2001	through 4000 gallons	\$100.00	per load
4001	through 6000 gallons	\$200.00	per load
6001	through 8000 gallons	\$300.00	per load
All Over	8000 gallons	\$500.00	per load

All haulers discharging non-domestic/pretreated/septic/package plant wastewater must go through a permit modification process before the City will accept batch discharges. A surcharge may apply when characteristics of the wastewater exceed allowable limits.

**System Budget and Expenditures**

An operating budget is prepared annually by the Utility Board and is approved by the Council.

**Method of Accounting**

The accounts of the Water and Sewer Funds are organized on the basis of fund accounting as enterprise funds. With respect to operating revenues and expenses, the City accounts are maintained in accordance with generally accepted accounting principles. The West Virginia State Auditor’s office audited the records of the City for the fiscal year ended June 30, 2014. (See “APPENDIX C – FINANCIAL STATEMENTS OF THE CITY OF NITRO.”)

**Retirement System Contributions (source: City Audits)**

Fiscal Years Ended June 30	2011	2012	2013	2014
<i>WV Retiree Health Benefits Trust Fund</i>				
Annual OPEB Cost	\$520,373	\$631,698	\$240,309	\$250,451
Percentage Contributed	23%	30%	87%	87%
<i>Public Employees’ Retirement System (PERS)</i>				
Annual Pension Cost	\$97,911	\$130,093	\$113,256	\$114,017
Percentage Contributed	100%	100%	100%	100%



December 3, 2015

City of Nitro  
Nitro, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Crews & Associates, Inc.  
Charleston, West Virginia

Re: City of Nitro (West Virginia) Sewerage System Bond Anticipation Notes,  
Series 2015

Ladies and Gentlemen:

We have served as bond counsel to the City of Nitro, West Virginia (the “Issuer”) in connection with the issuance of its Sewerage System Bond Anticipation Notes, Series 2015, dated the date hereof.

We have examined a record of proceedings relating to the issuance by the Issuer of its \$\_\_\_\_\_ aggregate principal amount of Sewerage System Bond Anticipation Notes, Series 2015 (the “Notes”).

The Notes 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 of the West Virginia Code of 1931, as amended (the “Act”), and a Bond and Note Ordinance duly passed by the Issuer on October 20, 2015, effective November 17, 2015, as supplemented by a Supplemental Parameters Resolution duly adopted by the Issuer on November 17, 2015 and a Certificate of Determinations executed by the Mayor on November \_\_, 2015 (collectively, the “Ordinance”), and are subject to all the terms and conditions of the Ordinance. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Ordinance when used herein.

The Notes are issued in fully registered form, are dated December 3, 2015, upon original issuance, mature on January 1 in the years and amounts and bear interest payable each January 1 and July 1, commencing July 1, 2016 all as set forth in the Ordinance.

The Ordinance provides that the Notes are issued for the purpose of (i) paying the costs of acquisition and construction of certain additions, betterments and improvements to the System; and (ii) paying the costs of issuance of the Notes.

The Notes have been sold to Crews & Associates, Inc. (the "Original Purchaser"), pursuant to a Notes Purchase Agreement dated November \_\_, 2015, and accepted by the Issuer (the "Notes Purchase Agreement").

As to questions of fact material to our opinion, we have relied upon representations of the Issuer, the Original Purchaser and other entities contained in the Ordinance, the Notes Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate and in the certified proceedings and other certifications of certain officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, and assuming compliance with the covenants and representations of the Issuer and others set forth in the Ordinance, the Notes Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate and such certifications, we are of the opinion, under existing law, that:

1. The Issuer is a duly organized and validly existing municipal corporation under and pursuant to the laws of the State of West Virginia, with full power and authority to adopt and enact the Ordinance, enter into the Notes Purchase Agreement, the Continuing Disclosure Agreement and the Tax Certificate, perform its obligations under the terms and provisions thereof and to issue and sell the Notes, all under the provisions of the Act and other applicable provisions of law.

2. The Issuer, through its governing body, has legally and effectively adopted and enacted the Ordinance, has authorized, executed and delivered the Notes Purchase Agreement, the Continuing Disclosure Agreement, and the Tax Certificate, has authorized the distribution of the Official Statement in connection with the marketing and sale of the Notes, and has issued and delivered the Notes to the Original Purchaser pursuant to the Notes Purchase Agreement. The Ordinance is in full force and effect as of the date hereof.

3. Assuming due authorization, execution and delivery by the other parties thereto, the Bond Purchase Agreement, the Continuing Disclosure Agreement and the Tax Certificate constitute valid, legal, binding and enforceable instruments of the Issuer in accordance with their respective terms.

4. The Notes have been duly authorized, executed and delivered by the Issuer and, assuming proper authentication, constitute valid and legally enforceable limited obligations of the Issuer, payable from, and secured by a lien on, the proceeds of future bonds to be issued by the Issuer. The interest on the Notes is payable from and secured by the Surplus Revenues of the System. The Notes are junior and subordinate to the Issuer's: (i) Sewer Revenue Bonds (West Virginia Water Development Authority), Series 1996 A, dated December 10, 1996, issued in the original aggregate principal amount of \$4,575,502 (the "Series 1996 A Bonds"); (ii) Sewer Revenue Bonds (West Virginia Water Development Authority), Series 2000 A, dated June 28, 2000, issued in the original aggregate principal amount of \$2,050,000 (the "Series 2000 A

Bonds”); (iii) Sewer System Revenue Bonds, Series 2001 A (West Virginia SRF Program), dated June 5, 2001, issued in the original aggregate principal amount of \$543,800 (the “Series 2001 A Bonds”); (iv) Sewer Revenue Bonds (West Virginia SRF Program), Series 2009 A, dated November 12, 2009, issued in the original aggregate principal amount of \$1,910,778 (the “Series 2009 A Bonds”); and (v) Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program), to be issued simultaneously with the Notes, in the original aggregate principal amount of \$679,519 (the “Series 2015 A Bonds”) (collectively, the “Prior Bonds”). The Notes are enforceable in accordance with their terms and the terms of the Ordinance, and are entitled to the benefits of the Ordinance and the Act.

5. Under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Notes (including any original issue discount properly allocable to owners of the Notes) is excludable from gross income of the holders thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”) and is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. Ownership of tax-exempt obligations, including the Notes, may result in collateral federal income tax consequences to certain taxpayers, including without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations.

The Issuer has designated the Notes as “Qualified Tax-Exempt Obligations” for purposes of paragraph (3) of Section 265(b) of the Code and covenanted that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income taxes (excluding, however, obligations described in Section 265(b)(3)(C)(ii) of the Code), including the Notes, have been or shall be issued by the Issuer or any entities subordinate to it, during the calendar year 2015, all as determined in accordance with the Code. We offer no opinion as to such collateral tax consequences or any other federal tax consequences arising with respect to the Notes. Prospective purchasers of the Notes should consult their own tax advisors as to such consequences.

The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code that must be satisfied subsequent to issuance of the Notes for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and with all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Notes set forth in the Ordinance, Notes Purchase Agreement, the Tax Certificate and the certifications of the Issuer and others. Failure to comply with such Code provisions or such certifications, covenants and representations could cause the interest on the Notes to be includable in gross income retroactive to the date of issuance of the Notes.

6. Under the Act, the Notes and the interest thereon are exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

7. The Notes are exempted securities within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended, and the West Virginia Uniform Securities Act, as amended, and it is not necessary, in connection with the public offering and sale of the Notes, to register any securities under said Securities Acts.

It is to be understood that the rights of the holders of the Notes and the enforceability of the Notes, the Ordinance, the Notes Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate, and the liens, pledges, rights or remedies with respect thereto, are subject to and may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws heretofore or hereafter enacted affecting creditors' rights or remedies generally and that their enforcement may also be subject to the application of public policy, general principles of equity and the exercise of judicial discretion in appropriate cases.

We do not express any opinion as to the sufficiency or accuracy of the material, information or financial statements which are set forth in the official statement prepared and used in connection with the offering and sale of the Notes.

We have examined the executed and authenticated Notes of said issue, and in our opinion, said Notes are in proper form and have been duly executed and authenticated.

Very truly yours,

**APPENDIX F**

**FORM OF ORDINANCE AND NOTES SUPPLEMENTAL RESOLUTION**

CITY OF NITRO  
WEST VIRGINIA

SEWERAGE SYSTEM  
BOND AND NOTE ORDINANCE

CITY OF NITRO  
SEWERAGE SYSTEM  
BOND AND NOTE ORDINANCE

TABLE OF CONTENTS

PAGE

ARTICLE I  
STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Ordinance .....	1
Section 1.02. Findings.....	1
Section 1.03. Ordinance Constitutes Contract .....	4
Section 1.04. Definitions.....	5

ARTICLE II  
AUTHORIZATION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND  
IMPROVEMENTS TO SYSTEM; AUTHORIZATION OF THE NOTES

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements.....	10
Section 2.02. Authorization of the Notes.....	10
Section 2.03. Security for the Notes .....	10
Section 2.04. Designation of Notes as “Qualified Tax-Exempt Obligations.” .....	10

ARTICLE III  
AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Bonds.....	11
Section 3.02. Execution of Bonds.....	11
Section 3.03. Authentication and Registration .....	12
Section 3.04. Negotiability, Transfer and Registration.....	12
Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost.....	12
Section 3.06. Bonds not to be Indebtedness of the City .....	13
Section 3.07. Bonds Secured by Pledge of Net Revenues.....	13
Section 3.08. Form of Bonds .....	13
Section 3.09. Sale of Bonds .....	13
Section 3.10. Bonds are Issued as Parity Bonds .....	13
Section 3.11. Delivery of Bonds.....	14

ARTICLE IV  
APPLICATION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01.	Application of Bond Proceeds .....	15
Section 4.02.	Disbursements From the Bond Construction Trust Fund .....	15
Section 4.03.	Funds and Accounts; Flow of Funds .....	16
Section 4.04.	Investments .....	17

ARTICLE V  
DEFAULT AND REMEDIES

Section 5.01.	Events of Default .....	18
Section 5.02.	Remedies.....	18
Section 5.03.	Appointment of Receiver.....	18

ARTICLE VI  
ADDITIONAL COVENANTS OF THE CITY

Section 6.01.	Completion of Project; Permits and Orders .....	20
Section 6.02.	Insurance and Construction Bonds .....	20
Section 6.03.	Issuance of Other Obligations Payable Out of Revenues .....	21
Section 6.04.	Engineering Services and Operating Personnel.....	21
Section 6.05.	Compliance With Law .....	21
Section 6.06.	Books; Records and Audit .....	21
Section 6.07.	Operating Budget.....	23
Section 6.08.	Tax Covenants .....	23
Section 6.09.	Rebate Covenant.....	23
Section 6.10.	Arbitrage .....	24
Section 6.11.	Tax Certificate and Rebate.....	24
Section 6.12.	Securities Laws Compliance.....	25
Section 6.13.	Defeasance of Bonds.....	25
Section 6.14.	Rates and Charges .....	26
Section 6.15.	Contracts .....	27

ARTICLE VII  
REGISTRAR

Section 7.01.	Appointment of Registrar .....	28
Section 7.02.	Responsibilities of Registrar.....	28
Section 7.03.	Evidence on Which Registrar May Act .....	28
Section 7.04.	Compensation and Expenses.....	28
Section 7.05.	Certain Permitted Acts.....	28
Section 7.06.	Resignation of Registrar .....	28
Section 7.07.	Removal .....	29
Section 7.08.	Appointment of Successor.....	29
Section 7.09.	Transfer of Rights and Property to Successor.....	29
Section 7.10.	Merger or Consolidation .....	29



Section 7.11. Adoption of Authentication .....30

ARTICLE VIII  
MISCELLANEOUS

Section 8.01. Modification or Amendment.....31  
Section 8.02. Severability of Invalid Provisions.....31  
Section 8.03. Repeal of Conflicting Ordinances.....31  
Section 8.04. Covenant of Due Procedure .....31  
Section 8.05. Statutory Notice and Public Hearing .....31  
Section 8.06. Effective Date .....32

CERTIFICATE OF TRUTH AND ACCURACY.....33

EXHIBIT A DESCRIPTION OF PROJECT ..... A-1  
EXHIBIT B FORM OF BOND AND FORM OF NOTE .....B-1  
EXHIBIT C NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND  
ORDINANCE .....C-1

**ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING SEWERAGE SYSTEM OF THE CITY OF NITRO; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$10,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, FROM TIME TO TIME IN ONE OR MORE SERIES AS DESIGNATED IN SUPPLEMENTAL RESOLUTIONS, OF THE CITY OF NITRO, THE PROCEEDS OF WHICH, SHALL BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF NITRO WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO PERMANENTLY FINANCE THE COST OF SUCH DESIGN, ACQUISITION AND CONSTRUCTION, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$9,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM BOND ANTICIPATION NOTES, TO TEMPORARILY FINANCE A PORTION OF THE COST OF SUCH DESIGN, ACQUISITION AND CONSTRUCTION; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AND ADOPTING OTHER PROVISIONS RELATED THERETO.**

Be It Ordained by the Council of the City of Nitro, West Virginia:

## ARTICLE I

### STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and other applicable provisions of law.

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

A. The City of Nitro, West Virginia (the "City" or the "Issuer"), now owns a sewerage system (the "System"), both within and without the corporate limits of the City, consisting of a sewage treatment plant or plants and its collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations and ejector stations and all other appurtenances, extensions, improvements and betterments necessary, appropriate, useful, convenient or incidental for the collection, treatment, purification and disposal in a sanitary manner of liquid and solid waste, sewage and industrial waste.

B. In accordance with Section 2 of the Act, the System is under the supervision and control of the Utility Board of the City (the "Utility Board").

C. The Utility Board has presented a petition to the City for the acquisition and construction of certain extensions, additions, betterments and improvements to the System (the "Project") as more fully described on Exhibit A, the enactment of this Ordinance and the issuance of the Sewerage System Revenue Bonds (the "Bonds") and the Sewerage System Bond Anticipation Notes (the "Notes"). The City has financed a portion of the design costs through the issuance of its \$800,000 Sewerage System Design Bond Anticipation Notes, Series 2013 A (The Huntington National Bank), dated September 20, 2013 (the "Series 2013 A Notes").

D. The estimated maximum cost of design, acquisition and construction of the Project is approximately \$7,600,000, which will be obtained from the proceeds of the Bonds and the Notes herein authorized.

E. The acquisition and construction of the System were financed or with proceeds of certain obligations of the City, which obligations are designated and have lien positions with respect to the Bonds as follows:

	<u>Designation</u>	<u>Lien Position</u>
1.	\$4,575,502 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 1996 A, dated December 10, 1996 (the "Series 1996 A Bonds");	First Lien
2.	\$2,050,000 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 2000 A, dated June 28, 2000 (the "Series 2000 A Bonds");	First Lien
3.	\$543,800 Sewer Revenue Bonds (West Virginia SRF Program), Series 2001 A, dated June 5, 2001 (the "Series 2001 A Bonds"); and	First Lien
4.	\$1,910,778 Sewer Revenue Bonds, (West Virginia SRF Program), Series 2009 A, dated November 12, 2009 (the "Series 2009 A Bonds").	First Lien

The Series 1996 A Bonds, the Series 2000 A Bonds, the Series 2001 A Bonds, and the Series 2009 A Bonds are collectively referred to as the "Prior Bonds." The Series 2013 A Notes will be paid in full with the issuance of the Bonds and/or Notes.

F. The City derives revenues from the System, and, except for the pledges thereof to secure and pay the Prior Bonds, said revenues are not pledged or encumbered in any manner.

G. It is necessary and essential to acquire and construct the Project, generally described on Exhibit A hereto and incorporated herein by reference, in order to preserve the public health, to be financed through the issuance of the Bonds, in the aggregate principal amount not to exceed \$10,000,000. The period of usefulness of the System after completion of the Project is not less than 40 years.

H. The estimated revenues to be derived in each year after the enactment of this Ordinance from the operation of the System will be sufficient to pay all Operating Expenses of the System, the principal of and interest on the Prior Bonds, the Notes and/or the Bonds and all funds and accounts and other payments provided for in this Ordinance and the Prior Ordinances.

I. The Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the form set forth in Exhibit B attached hereto and incorporated herein by reference with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the City.

J. All things necessary to make the Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the City according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Bonds, will be timely done and duly performed.

K. The enactment of this Ordinance, and the execution and issuance of the Bonds, subject to the terms thereof, will not result in any breach of, nor constitute a default under, any instrument to which the City is a party or by which it may be bound or affected.

L. The City is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and the System; 95% or more of the Net Proceeds of the Bonds are to be used for local government activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City).

M. It is deemed necessary for the City to issue the Bonds in the aggregate principal amount of not more than \$10,000,000, to permanently finance the costs of the acquisition and construction of the Project and, prior to the issuance of the Bonds, to issue the Notes in the aggregate principal amount of not more than \$9,000,000, to temporarily finance a portion of the costs of design, acquisition and construction of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; repayment of any interim financing notes; interest on the Notes; interest on the Bonds prior to and during construction or acquisition and for six 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, any fees or expenses of the Original Purchaser or DEP, commitment fees, discount, initial fees for the service of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds, and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of the same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the City for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of the indebtedness incurred by the City for such purposes shall be deemed part of the Cost of the Project.

N. It is in the best interests of the City that the Bonds be sold to the Original Purchaser(s) pursuant to the terms and provisions set forth in the Supplemental Resolution.

O. Prior to the issuance of the Bonds, the City shall obtain (i) a certificate from an independent certified public accountant stating that the coverage and parity tests of the Prior Bonds have been met; and (ii) the written consent of the registered owners of the Prior Bonds to the issuance of the Bonds on a parity with the Prior Bonds. The Bonds shall be issued with a lien on the Net Revenues on a parity with the lien held by the registered owners of the Prior Bonds. Other than the Prior Bonds and the Notes, there are no other outstanding bonds or obligations of the City which are secured by revenues or assets of the System.

The Notes shall be issued junior and subordinate to the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. The Notes shall be payable solely from and secured by the proceeds of the Bonds to be sold to the Authority on behalf of the SRF Program or any other WDA Program.

P. The City has complied with all requirements of West Virginia law relating to the authorization of the acquisition, construction and operation of Project and the System and issuance of the Bonds and the Notes, or will have so complied prior to the 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 not subject to appeal or rehearing.

Q. The City will not permit, at any time, any of the proceeds of the Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code.

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

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Bonds authorized to be issued hereunder by those who shall own the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the City and such Registered Owners, and the covenants and agreements herein set forth to be performed by

the City shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Bonds issued hereunder, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bond by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. Except as provided below, terms used in this Ordinance have the meanings set forth below, unless the context expressly requires otherwise.

“Act” shall mean Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

“Authority” shall mean the West Virginia Water Development Authority, which may be one of the original purchasers and Registered Owners of the Bonds and the Notes on behalf of the SRF Program and the WDA Program, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

“Bond Counsel” shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the City or the Utility Board, and shall initially mean Jackson Kelly PLLC, Charleston, West Virginia.

“Bond Insurer” shall mean any entity which shall insure all or any portion of the payment of principal of and interest on the Bonds and which shall be designated as such in the Supplemental Resolution, and in the event no such entity is so designated, all references in this Ordinance to the Bond Insurer shall be null and void and have no force and effect.

“Bond Register” shall mean the books of the City maintained by the Registrar for the registration and transfer of the Bonds.

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

“Bondholder” or “Holder of the Bonds” or “Owner of the Bonds” or “Registered Owner” or any similar term shall mean any person who shall be the Registered Owner of any Outstanding Bond as hereinafter defined.

“Bonds” shall mean the not more than \$10,000,000 in aggregate principal amount of Sewerage System Revenue Bonds of the City, authorized by this Ordinance to be issued from time to time in one or more series as designated in Supplemental Resolutions.

“Bonds Construction Trust Fund” shall mean the Bonds Construction Trust Fund created by Section 4.01 D hereof.

“Bond Purchase Agreement” shall mean, collectively, the Bond Purchase Agreements by and among the Authority, the DEP and the City, providing for the purchase of all

or a part of the Bonds from the City by the Authority, the forms of which are attached as exhibits in the Supplemental Resolution.

“Closing Date” shall mean the date or dates upon which there is an exchange of the Bonds and the Notes for all or a portion of the proceeds of the Bonds and the Notes from the Original Purchaser.

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

“Commission” shall mean the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Commission.

“Completion Date” shall mean the completion date of the Project as defined in the SRF Regulations.

“Consulting Engineers” shall mean S&S Engineers, Inc., Charleston, West Virginia, or any engineer or firm of engineers, licensed by the State, which shall at any time hereafter be retained by the City as Consulting Engineers for the System in accordance with Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended.

“Costs of the Project” shall mean those costs described in Section 1.02(M) hereof to be a part of the cost of the acquisition and construction of the Project.

“Council” or “City Council” shall mean the Council of the City.

“DEP” shall mean the West Virginia Department of Environmental Protection or any other agency of the State of West Virginia that succeeds to the function of the DEP.

“Depository Bank” shall mean the bank or banks to be designated as such in the Supplemental Resolution, and its successors and assigns.

“DTC” shall mean The Depository Trust Company, New York, New York.

“Fiscal Year” shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

“Independent Accountants” or “Independent Certified Public Accountants” shall mean any firm of certified public accountants which shall be retained by the City as independent accountants for the System.

“Mayor” shall mean the Mayor of the City.

“Municipal Bond Insurance Policy” shall mean the municipal bond insurance policy, if any, issued by the Bond Insurer simultaneously with the delivery of the Bonds, insuring

the payment of the principal of and interest on all or any of the Bonds in accordance with the terms thereof.

“Notes” shall mean the not more than \$9,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes of the City, authorized by this Ordinance to be issued in one or more series as designated in the Supplemental Resolution.

“Ordinance” shall mean this Ordinance.

“Original Purchaser” shall mean, collectively, either the Authority and/or the Underwriter which are expected to be the purchasers of the Bonds and/or the Notes directly from the City, as determined by resolutions supplemental hereto.

“Outstanding” when used with reference to Bonds, as of any particular date, describes all such Bonds theretofore and thereupon being authenticated and delivered, except (i) any such Bond canceled by the Registrar, at or prior to said date; (ii) any such Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity of any such Bond, shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any such Bond deemed to have been paid as provided in Section 6.13 hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any such Bond registered to the City.

“Paying Agent” shall mean the West Virginia Municipal Bond Commission or other entity designated as such for the Notes and Bonds in Supplemental Resolutions.

“Private Business Use” shall mean 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” shall mean the extensions, additions, betterments and improvements to the existing sewerage system of the City described in Exhibit A attached hereto.

“Purchase Price,” for the purpose of computation of the Yield of the Bonds, has the same meaning as the term “issue price” in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Bonds of each maturity is sold or, if the Bonds are privately placed, the price paid by the first buyer of the Bonds or the acquisition cost of the first buyer. “Purchase Price,” for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Bonds.

“Recorder” shall mean the Recorder of the City.



“Registrar” shall mean the entity named as such in the Supplemental Resolution.

“Regulations” shall mean the temporary and permanent regulations promulgated under the Code.

“Reserve Account” shall mean, collectively, one or more reserve accounts for the Bonds created by Section 4.03 hereof.

“Reserve Accounts” shall mean, collectively, the respective Reserve Accounts created for the Prior Bonds and the Bonds.

“Reserve Requirement” shall mean, as of any date of calculation, the lesser of (i) 10% of the original stated principal amount of the Bonds; (ii) the maximum amount of principal and interest which will become due on the Bonds in any year; or (iii) 125% of the average amount of principal and interest which will become due on the Bonds.

“Sinking Fund” shall mean, collectively, one or more Sinking Funds for the Bonds created by Section 4.03 hereof.

“Sinking Funds” shall mean, collectively, the respective Sinking Funds created for the Prior Bonds and the Bonds.

“SRF Program” shall mean the West Virginia Clean Water SRF 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” shall mean the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

“State” shall mean the State of West Virginia.

“Supplemental Resolution” shall mean any resolution, ordinance or order of the City supplementing or amending this Ordinance and, when preceded by the article “the”, refers specifically to the supplemental resolutions authorizing the sale of one or more series of the Bonds or the Notes; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Bonds or the Notes and not so included may be included in another Supplemental Resolution.

“Surplus Revenues” shall mean the Net Revenues not required by the Prior Ordinances and this Ordinance, as supplemented and amended, to be set aside and held in, including but not limited to, any sinking funds, reserve accounts and renewal and replacement funds.

“System” shall mean the complete existing sewerage system now owned by the City and managed by the Utility Board, consisting of a sewerage treatment and collection

system, and shall include any extensions, additions, betterments and improvements thereto, including the Project, hereafter acquired or constructed for the sewerage system from any sources whatsoever, both within and without the City.

“Term Bonds” shall mean the Bonds subject to mandatory sinking fund redemption as described in Section 3.12 hereof.

“Underwriter” shall mean one or more underwriting firms designated as such in the Supplemental Resolution.

“WDA Program” shall mean the Authority’s loan program, under which the Authority purchases the water development revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of the water development revenue bonds of the Authority.

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

Additional terms and phrases are defined in this Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with general accepted accounting principles.

The terms “herein”, “hereunder”, “hereby”, “hereto”, “hereof” and any similar terms refer to this Ordinance; and the term “hereafter” means after the date of the enactment of this Ordinance.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Ordinance so numbered.

ARTICLE II  
AUTHORIZATION OF EXTENSIONS, ADDITIONS,  
BETTERMENTS AND IMPROVEMENTS TO SYSTEM; AUTHORIZATION OF THE  
NOTES

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements. There is hereby authorized and ordered the acquisition and construction of the Project at an estimated cost of not to exceed \$7,604,000, in accordance with plans and specifications prepared by the Consulting Engineers, approved by the DEP and the City, and on file in the office of the Utility Board.

The City has received bids and will enter into contracts for the acquisition and construction of the Project which are in an amount and otherwise compatible with the financing plan submitted to the Original Purchaser.

Section 2.02. Authorization of the Notes. To provide funds for a portion of the cost of acquisition and construction of the Project, pending issuance of all or a portion of the Bonds to the Authority on behalf of the SRF Program, there shall be and hereby are authorized to be issued "Sewerage System Bond Anticipation Notes," of the City in an aggregate principal amount of not to exceed \$9,000,000. The exact amount and terms of the Notes shall be approved by the Council of the City in a resolution supplemental hereto. The text of the Notes shall be in substantially the form set forth in Exhibit B attached hereto.

Section 2.03. Security for the Notes. The principal of the Notes shall be payable solely from and secured by the proceeds of the Bonds to be sold to the Authority on behalf of the SRF Program or any other WDA Program. The Notes shall not, in any event, be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the proceeds of the Bonds to be sold to the Authority on behalf of the SRF Program or any other WDA Program. No Owner of the Notes shall ever have the right to compel the exercise of the taxing power of the City to pay the Notes or any interest thereon. The interest on the Notes shall be paid from the net revenues of the System but such payment shall be subordinate to the Prior Bonds.

Section 2.04. Designation of Notes as "Qualified Tax-Exempt Obligations." The City hereby designates the Notes as "qualified tax-exempt obligations" for purposes of Section 265(b)(3)(B) of the Code and covenants that the Notes do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income tax purposes (excluding, however, obligations issued to currently refund any obligation of the Issuer to the extent the amount of the refunding obligation does not exceed the amount of the refunded obligation and private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code), including the Notes, have been or shall be issued by the City, including all subordinate entities of the City, during the calendar year 2015, all as determined in accordance with the Code.

## ARTICLE III

### AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Bonds. For the purposes of capitalizing interest on the Bonds, funding the Reserve Account for the Bonds, paying Costs of the Project not otherwise provided for (including the payment of the Notes), paying costs of issuance of the Bonds and related costs, or any or all of such purposes, as determined by Supplemental Resolutions, there shall be and hereby are authorized to be issued the Bonds of the City. The Bonds shall be issued from time to time in one or more series as set forth in the Supplemental Resolutions, designated as "Sewerage System Revenue Bonds", in an aggregate principal amount of not more than \$10,000,000. The Bonds shall be issued in such principal amounts, shall have the series designation, shall be dated as of the date of delivery thereof, shall bear interest at such rate or rates, not exceeding the then legal maximum rate, and shall mature at such times and in such amounts as shall be set forth in the Supplemental Resolution. The repayment of principal, interest and the SRF Administrative Fee, if any, on the Bonds shall be as set forth in the Supplemental Resolution. The Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and as the Council of the City shall prescribe by resolution (or by supplemental or amendatory ordinance of said Council as said Council shall determine) adopted in connection with the sale of such Bonds.

The 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 Bonds shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar.

Each series of Bonds shall be issued in fully registered form, in such denominations and shall have such terms as set forth in the Supplemental Resolution. The Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond in aggregate principal amount equal to the amount of the Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of the Bonds.

Section 3.02. Execution of Bonds. The Bonds shall be executed in the name of the City by the Mayor and attested by the City Recorder, and the seal of the City shall be affixed thereto or imprinted thereon. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the City before the Bonds so signed and sealed have been sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the City by such person as, at the actual time of the execution of such Bonds, shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Exhibit B, shall have been duly manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be, and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Registered Owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide owner for value.

So long as any of the Bonds remain Outstanding, the City, through the Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

Bonds shall be transferable only upon the books of the Registrar, by the Registered Owner thereof in person or by the Registered Owner's attorney duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or the Registered Owner's duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Registrar. For every such exchange or transfer of Bonds, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Registrar incurred in connection therewith, which sum or sums shall be paid by the City. The Registrar shall not be obliged to make any such exchange or transfer of Bonds during the 15 days preceding an interest payment date on the Bonds, or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the City may, in its discretion, issue and deliver a new Bond in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Registered Owner's furnishing the City proof of ownership thereof and

satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur and the Registrar shall authenticate the new Bond. All Bonds so surrendered shall be canceled by the Registrar and held for the account of the City. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the City may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Bonds be at any time found by anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Bonds not to be Indebtedness of the City. The Bonds shall not, in any event, be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided on a parity with the Prior Bonds. No Registered Owner of the Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay the Bonds or any interest thereon.

Section 3.07. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all the Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System on a parity with the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and the Prior Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund established herein or in the Prior Ordinances are hereby irrevocably pledged to the payment of the principal of and any interest on the Bonds and the Prior Bonds as the same become due.

Section 3.08. Form of Bonds. The text of the Bonds shall be substantially as set forth in Exhibit B, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof.

Section 3.09. Sale of Bonds. The Bonds shall be sold pursuant to the terms and conditions of a loan agreement or bond purchase agreement as set forth in a resolution supplemental hereto.

Section 3.10. Bonds are Issued as Parity Bonds. The Bonds are issued as and shall constitute additional Parity Bonds in accordance with the Prior Ordinances. Prior to the issuance of the Bonds, the following must occur:

A. The City must receive the written consent of the Authority for the issuance of parity bonds.

B. The coverage and parity requirements of the Prior Ordinances must be satisfied.

C. Unless waived in writing by the Authority, the City or the Utility Board must enter into written contracts for the immediate design, acquisition or construction of the Project not later than simultaneously with the delivery of the Bonds.

D. The Bonds shall not be issued unless all the payments into the respective funds and accounts provided for in the Prior Ordinances on account of the Prior Bonds and any other payments provided for in the Prior Ordinances, shall have been made in full as required to the date of delivery of the Bonds.

Section 3.11. Delivery of Bonds. The City shall execute and deliver the Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Bonds to the Original Purchaser upon receipt of the documents set forth below:

- (A) A request and authorization to the Registrar on behalf of the City, signed by an Authorized Officer, to authenticate and deliver the Bonds to the Original Purchaser;
- (B) Copies of this Ordinance and the Supplemental Resolution certified by the City Recorder; and
- (C) The unqualified approving opinion of Bond Counsel regarding the Bonds.

## ARTICLE IV

### APPLICATION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01. Application of Bond Proceeds. From the moneys received from the sale of the Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. All interest accrued on the Bonds from the date thereof to the date of delivery thereof shall be deposited with the Commission in the Sinking Fund and applied to payment of interest on the Bonds on the first interest payment date.

B. From the proceeds of the Bonds, there shall be deposited with the Commission in the Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

C. Next, from the proceeds of the Bonds, there shall be deposited with the Commission in the Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Reserve Account.

D. There is hereby created and established with the Depository Bank a special fund, designated the "Bonds Construction Trust Fund". The remaining moneys derived from the sale of the Bonds shall be deposited by the City in the Bonds Construction Trust Fund. Moneys in the Bonds Construction Trust Fund shall be used solely to pay Costs of the Project and costs of issuance of the Bonds and until so transferred or expended, are hereby pledged as additional security for the Bonds. All costs of issuance shall be paid within 60 days of the Closing Date.

E. After completion of acquisition and construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, the City shall (i) expend any remaining proceeds of the Bonds as provided in the Supplemental Resolution and (ii) file a schedule with the Authority and the DEP, setting forth the actual costs of the Project and sources of funds used therefor.

Section 4.02. Disbursements From the Bond Construction Trust Fund. Except as provided in Section 4.01 hereof, disbursements from the Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Utility Board of the following:

A certificate, signed by the general manager of the Utility Board 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 disbursements 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 Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the City.

The City shall expend all proceeds of the Bonds within 3 years of the date of issuance of the Bonds.

Section 4.03. Funds and Accounts; Flow of Funds. The funds and accounts established by the Prior Ordinances are hereby continued. In addition to the funds and accounts established by the Prior Ordinances, there are hereby created at the Commission the Sinking Fund, the Reserve Account and the Redemption Account with respect to the Bonds as further described in the Supplemental Resolution. Following the monthly payment of Operating Expenses, the City shall make monthly payments to the Commission for the Prior Bonds as required under the Prior Ordinances. The monthly payments to the Commission for the Bonds shall be set forth in the Supplemental Resolution.

Moneys in the respective Sinking Funds shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due. Moneys in the respective Reserve Accounts shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due, when other moneys in the respective Sinking Funds are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the respective Reserve Accounts shall be transferred, not less than once each year, to the Bonds Construction Trust Fund prior to completion of the Project and thereafter, to the respective Sinking Funds.

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

Moneys in the Sinking Funds and the Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 4.04 hereof.

If, on any monthly payment date, the revenues are insufficient to place the required amount in any of the funds or accounts as provided herein and in the Prior Ordinances, the deficiency shall be made up in subsequent payments, in addition to the payments which would otherwise be required to be made into the funds and accounts on subsequent payment dates.

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 First Lien Bonds and the Bonds and thereafter, with respect to the Second Lien Bonds, in accordance with the respective principal amounts then Outstanding.

The City 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.

Except as provided above and in the Supplemental Resolution, all sinking fund, reserve account, and renewal and replacement fund payments shall remain as governed by the Prior Ordinances.

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

Section 4.04. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank or such other bank or national banking association holding such fund or account, as the case may be, at the direction of the City in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the Prior Ordinances, the need for such moneys for the purposes set forth herein and the specified restrictions and provisions set forth in this Section 4.04.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount. The Commission, the Depository Bank or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss of such liquidation. The Depository Bank or such other bank or national banking association may make any and all investments permitted by this section through its own 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 City, at least once each year (or more often if reasonably requested by the City), a summary of such funds, accounts and investment earnings. The City shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Bonds from gross income for federal income tax purposes.

## ARTICLE V

### DEFAULT AND REMEDIES

Section 5.01. Events of Default. Each of the following events shall constitute an “Event of Default” with respect to the Bonds:

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

(2) If default occurs in the City’s observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Ordinance, any supplemental resolution or in the Bonds, and such default shall have continued for a period of 30 days after the City shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Registered Owner of a Bond; or

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

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

Section 5.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond or any Bond Insurer if the Bonds are insured 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 City to perform its duties under the Act and the Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the City to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

Section 5.03. Appointment of Receiver. Any Registered Owner of a Bond or any Bond Insurer if the Bonds are insured may, by proper legal action, compel the performance of the duties of the City under the Ordinance and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to the 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 City, with the power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Ordinance and the Act.

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

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Ordinance for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, possession of the System shall be surrendered to the City 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 City and for the joint protection and benefit of the City 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 City 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 Ordinance, and the title to and ownership of the System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE VI

### ADDITIONAL COVENANTS OF THE CITY

All the covenants, agreements and provisions of the Prior Ordinances shall remain in full force and effect as long as the Prior Bonds and the Bonds are outstanding and shall apply to the Bonds as if fully set out herein. The following covenants are supplemental and in addition to the covenants set forth in the Prior Ordinances.

Section 6.01. Completion of Project; Permits and Orders. The City shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing enterprise in good condition and in compliance with all federal and state requirements and standards.

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

Section 6.02. Insurance and Construction Bonds. The City hereby covenants and agrees that so long as the Bonds remain Outstanding, the City 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. The City will require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Original Purchaser. Such insurance shall be made payable to the order of the Registered Owners, the City, the prime contractor and all subcontractors, as their interests may appear. The City will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, to protect the interests of the City, the Registered Owners, the prime contractor and all subcontractors as their interests may appear during construction of the Project in the full insurable value thereof. In time of war, the City shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be disposed of as provided in the Ordinance and otherwise shall be placed in the Renewal and Replacement Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The City will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The City shall carry such other insurance as is required by the Original Purchaser, including but not limited to flood insurance and business interruption insurance, to the extent available at

reasonable cost to the City. The City shall verify all such insurance prior to commencement of construction.

The City 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 City shall verify such bonds prior to commencement of construction.

Section 6.03. Issuance of Other Obligations Payable Out of Revenues. In addition to the limitations on the issuance of parity obligations set forth in the Prior Ordinances, no parity obligations payable out of revenues of the System shall be issued after the issuance of the Bonds without the prior written consent of the Registered Owner of the Prior Bonds then Outstanding and without complying with the parity requirements of the Prior Ordinance and the Supplemental Resolution.

Section 6.04. Engineering Services and Operating Personnel. Prior to the issuance of the Bonds, the City shall obtain the certificate of the Consulting Engineers, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to 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 City shall provide and maintain competent and adequate engineering services satisfactory 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 City at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

Section 6.05. Compliance With Law. The City hereby covenants and agrees to perform, satisfy and comply with all terms, conditions and requirements of all applicable laws, rules and regulations issued by the Authority, the DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

Section 6.06. Books; Records and Audit. The City 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 City shall permit the Original Purchaser, 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 City shall submit to the Original Purchaser 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 any state and federal grants or other sources of financing for the Project.

All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the City.

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

The accounting system for the System shall follow current generally accepted accounting principles and safeguards in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the City. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other bookkeeping records as prescribed by the City. The City 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 City shall be reported to such agent of the City as the Council shall direct.

The City shall file with the Original Purchaser, and shall mail in each year to any Registered Owner or Owners of Bonds requesting the same, an annual report containing the following:

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

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

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

The City shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, and, shall mail upon request, and make available generally, the report of the Independent Accountants, or a summary thereof, to any Registered Owner or Owners of Bonds. The report of said audit shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet its Operating Expenses and debt service and reserve requirements.

Section 6.07. Operating Budget. The Utility Board shall annually prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for the operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Original Purchaser within 30 days of the adoption thereof.

Section 6.08. Tax Covenants. The City hereby further covenants and agrees as follows:

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

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

C. PRIVATE LOAN LIMITATION. The City shall assure that not in excess of the lesser of 5% of the proceeds of the Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

D. FEDERAL GUARANTEE PROHIBITION. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

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

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

Section 6.09. Rebate Covenant. The City is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System. As covenanted above, the Bonds are not private activity bonds within the meaning of the Code, and ninety-five percent (95%) or more of the net proceeds (as defined in the Code) of the Bonds will be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City). The City reasonably expects to expend the proceeds of the Bonds within the time period that would provide an exception from



the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the City is in fact subject to such rebate requirements, the City hereby covenants to rebate to the United States the amounts required by the Code and to take all steps necessary to make such rebates. In the event the City fails to make such rebates as required, the City shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of interest on the Bonds.

Section 6.10. Arbitrage. The City covenants that (i) it will not take, or permit or suffer to be taken, any action with respect to the proceeds of the Bonds which would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the 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 6.11. Tax Certificate and Rebate. The City shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Bonds. In addition, the City covenants to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds and fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of the Ordinance.

If it is determined that the City does not qualify for an exception to Section 148 of the Code or the City is otherwise subject to rebate in connection with the Bonds, the City shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the City shall deposit, or cause to be deposited, with the Depository Bank in a separate fund designated the Rebate Fund, such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder, if any, and used only for payment of rebatable arbitrage to the United States. The City shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the City to be used for any lawful purpose of the System. The City shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States

which are required, the City shall assure that such payments are made by the City to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the City shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the City. The City may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the City may deem appropriate in order to assure compliance with this Section 6.11. The City shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 6.11 in accordance with the requirements of Section 148(f) of the Code. In the event the City fails to make such rebates as required, the City shall pay the required rebate amount and all interest, penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

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

Section 6.12. Securities Laws Compliance. The City will provide the Original Purchaser, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Original Purchaser may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240). The City will also deliver a continuing disclosure agreement or certificate in form acceptable to the Original Purchaser sufficient to ensure compliance with SEC Rule 15c2-12, as amended from time to time.

Section 6.13. Defeasance of Bonds. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the Registered Owners of the Bonds, the principal thereof, and redemption premium, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then the pledge of Net Revenues and any other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the City to the Registered Owners 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 Bonds from gross income for federal income tax purposes.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such

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

Section 6.14. Rates and Charges. The City has obtained any and all approvals of rates and charges required by state law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the City duly enacted on March 5, 2004, which rates are incorporated herein by reference as a part hereof.

So long as the Bonds are outstanding, the City 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 this Ordinance. In the event the schedule of rates, fees and charges initially established for the System in connection with the Bonds shall prove to be insufficient to produce the required sums set forth in this Ordinance, the City 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 Ordinance. In any event, subject to any requirements of law, the City shall not reduce the rates or charges for services set forth in the rate ordinance described above.

The City shall diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent

to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The City further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System, and any services and facilities of the water system, if so owned by the City, 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 City, the City 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 Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 6.15. Contracts. The City shall, simultaneously with the delivery of the Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

## ARTICLE VII

### REGISTRAR

Section 7.01. Appointment of Registrar. The Registrar for the Bonds shall be appointed pursuant to the Supplemental Resolution. The City is hereby authorized and directed to enter into an agreement with the Registrar, the substantial form of which agreement is to be approved by Supplemental Resolution.

Section 7.02. Responsibilities of Registrar. The recitals of fact in the Bonds shall be taken as statements of the City, and the Registrar shall not be responsible for their accuracy. The Registrar shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Bonds by the City. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication and Registration on the Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described above.

Section 7.03. Evidence on Which Registrar May Act. Except as otherwise provided herein, the Registrar shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. Whenever the Registrar shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the City, but in its discretion the Registrar may instead accept other evidence of such fact or matter.

Section 7.04. Compensation and Expenses. The City shall pay to the Registrar from time to time reasonable compensation for all services, including the transfer of registration of Bonds, the first exchange of Bonds and the exchange of Bonds in the event of partial redemption, incurred in the performance of its duties hereunder.

Section 7.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Registered Owners or effect or aid in any reorganization growing out of the enforcement of the Bonds or this Ordinance, whether or not any such committee shall represent the Registered Owners of a majority in principal amount of the Bonds Outstanding.

Section 7.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than 60 days' written notice to the City. A copy of such notice shall also be mailed to each Registered

Owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the City or the Registered Owners, in which event such resignation shall take effect immediately; provided that, in no event shall such resignation take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 7.07. Removal. The Registrar may be removed at any time by the City, the Bond Insurer or the Registered Owners of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the City, the Bond Insurer or by such Registered Owners or their attorneys duly authorized in writing and delivered to the City, as the case may be. Copies of each such instrument shall be delivered by the City to the Registrar. Such removal shall take effect upon the date stated in such instrument; provided that, in no event shall such removal take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 7.08. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Registered Owners of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Registered Owners or their attorneys duly authorized in writing and delivered to the City and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the City shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Registered Owners. A copy of such notice shall also be mailed to each Registered Owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Any successor Registrar appointed by the City shall, immediately and without further act, be superseded by a Registrar appointed by such Registered Owners. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the City written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Registered Owner may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance.

Section 7.09. Transfer of Rights and Property to Successor. Any predecessor Registrar shall pay over, assign and deliver any moneys, books and records held by it to its successor.

Section 7.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall

be a bank, trust company or national banking association meeting the requirements set forth in Section 7.08 hereof.

Section 7.11. Adoption of Authentication. In case any of the Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Bonds so authenticated, and, in case any Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Bonds in the name of the predecessor Registrar or in its own name.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01. Modification or Amendment. Prior to the issuance of the Bonds, this Ordinance may be amended or supplemented in any way by a Supplemental Resolution. All provisions required by the Bond Insurer, if any, shall be set forth in the Supplemental Resolution and to the extent they constitute an amendment or modification of this Ordinance, shall be controlling. Following issuance of the Bonds, no material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Registered Owners shall be made without the consent in writing of the Registered Owners of the Bonds then Outstanding and to be affected by said modification; provided, however, that no change shall be made in the maturity of any Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the City to pay such principal and interest out of the revenues of the System without the consent of the Registered Owner thereof. No amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds required for consent to the above permitted amendments or modifications. Notwithstanding the foregoing, this Ordinance may be amended without the consent of any Registered Owner as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest on the Bonds from gross income of the Registered Owners thereof.

Section 8.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Bonds.

Section 8.03. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, other than the Prior Ordinances, in conflict with this Ordinance are, to the extent of such conflict, repealed.

Section 8.04. Covenant of Due Procedure. The City covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the final enactment and passage of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Recorder and members of Council and the Utility 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 8.05. Statutory Notice and Public Hearing. Upon adoption hereof, the abstract of this Ordinance in the form set forth in Exhibit C attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks, with at least 6 full days intervening between each publication, in the Charleston Gazette-Mail a qualified newspaper



published and of general circulation in the City of Nitro, together with a notice stating that this Ordinance has been adopted and that the City contemplates the issuance of the Bonds, and that any person interested may appear before the Council upon a certain date, 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 City for review by interested persons during office hours of the City. The Council hereby determines that the abstract contains sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Section 8.06. Effective Date. This Ordinance shall take effect immediately following public hearing and final reading hereof.

**CERTIFICATE OF TRUTH AND ACCURACY**

I, the undersigned, as Recorder of the City of Nitro, Kanawha County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of the official record of the City of Nitro, such records being in the custody of the undersigned and maintained at the City of Nitro, City Hall, Nitro, Kanawha County, West Virginia, and that the action taken by the Council in the foregoing document remains in full force and effect and has not been amended.

Dated this 3<sup>rd</sup> day of December, 2015.

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Recorder

[SEAL]

## EXHIBIT A

### DESCRIPTION OF PROJECT

The design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City, including: the extension of service to approximately 94 customers in the Blakes Creek and Eastwood Acres areas; the replacement of sewer lines on Bailes Drive; the replacement of Pump Station No. 6; the installation of telemetry at eight major pump stations; the installation of storm sewers in the Pump Station No. 7 drainage area; relining existing 42 inch clay tile brick sewer line through Board of Education property and rehabilitation of manholes; replacement of existing belt filter press with a new, larger press; replacement of existing sewer line on Reeves Drive; relocation of approximately 200 hundred linear feet of the existing eight-inch force mains at the Poca High School pump station and all appurtenances necessary therefor.

EXHIBIT B

[FORM OF BOND]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA  
CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS, SERIES \_\_\_\_\_

No. AR-\_\_

\$

KNOW ALL MEN BY THESE PRESENTS: That CITY OF NITRO, a municipal corporation and political subdivision of the State of West Virginia, in Kanawha County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority "), or registered assigns, the sum of DOLLARS (\$\_\_\_\_\_), or such lesser amount as shall have been advanced to the City 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 \_\_\_\_, \_\_\_\_, 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 of \_\_\_\_ percent (\_\_\_%) per annum as set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Ordinance) on this Bond shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the Paying Agent(as defined in the hereinafter described Ordinance). The interest on this Bond is payable by check or draft mailed to the registered owner hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Ordinance) on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable so long as the Authority is registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West

Virginia Department of Environmental Protection (the "DEP") and as otherwise provided by the Loan Agreement dated \_\_\_\_\_, among the Authority, the DEP and the City.

This Bond is issued (i) to pay the costs of design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City (the "Project"); (ii) to fund a reserve account for this Bond; and (iii) to pay certain costs of issuance hereof and related costs. The existing sewerage system of the City, the Project and any further additions, betterments and 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 of the Code of West Virginia, 1931, as amended (the "Act"), and in Ordinance passed by the City 20\_\_\_\_\_, and a Supplemental Resolution adopted by the City on \_\_\_\_\_, 20\_\_\_\_ (collectively, the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Ordinance.

This Bond is issued on a parity with respect to liens, pledge and source of and security for payment with the Prior Bonds, all as defined in the Ordinance.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues as defined in the Ordinance, to be derived from the operation of the System, on a parity with the Prior Bonds moneys in the Reserve Account created under the Ordinance (the "Series \_\_\_\_\_ Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City 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 \_\_\_\_\_ Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on this Bond and all 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 \_\_\_\_\_ Bonds Reserve Account an amount 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 obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of this Bond for the terms of which reference is made to the Ordinance. Remedies

provided the registered owners of this Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of the Registrar, kept for that purpose at the office of the Registrar, by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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 City, 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 City for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, CITY OF NITRO has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, \_\_\_\_\_.

[SEAL]

\_\_\_\_\_

\_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_

Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

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

Date: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer



EXHIBIT A

RECORD OF ADVANCES

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

Total \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

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\_\_\_\_\_ the  
within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney  
to transfer the said Bond on the books kept for registration of the within Bond of the said City  
with full power of substitution in the premises.

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

In the presence of:

**FORM OF NOTE**

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA  
CITY OF NITRO  
SEWER REVENUE BOND ANTICIPATION NOTES, SERIES 2015 B

No. BR-1

\$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That on this \_\_\_ day of \_\_\_\_\_, 2015, the CITY OF NITRO, a municipal corporation and political subdivision of the State of West Virginia in Kanawha County of said State (the "City"), for value received, hereby promises to pay, but only from the special funds provided therefor, as hereinafter set forth, to \_\_\_\_\_ (the "Owner"), or registered assigns, the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), on \_\_\_\_\_, or upon the issuance of revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes, whichever shall occur earlier. The interest on this Note shall be at the rate of \_\_\_% per annum, payable semiannually on the 1<sup>st</sup> day of each \_\_\_\_\_ and \_\_\_\_\_, commencing \_\_\_\_\_, 20\_\_\_. The entire outstanding principal balance of this Note and all interest accrued hereon shall be payable in full on \_\_\_\_\_, 20\_\_\_, or upon the issuance of revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes, whichever shall occur earlier.

The annual interest rate for this Note is computed on a simple interest/365 day basis.

The Registrar, as hereinafter defined, shall notify the City of the amount of interest so accrued. Interest is payable by check or draft mailed to the Owner at the address as it appears on the books of Registrar, as hereinafter defined, or by wire transfer or other mutually agreeable method. This Note shall be payable as to principal upon surrender at the principal office of The Huntington National Bank, as registrar and paying agent (the "Registrar"), in any coin or currency which on the date of payment of principal is legal tender for the payment of public and private debts under the laws of the United States of America.

This Note is subject to prepayment without penalty in whole or in part after \_\_\_\_\_, 20\_\_\_, upon the issuance of revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes.

This Note is issued for the purposes of (i) temporarily financing a portion of the costs of the acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage system of the City (the "Project"); and (ii) paying certain costs of issuance and related costs.

This Note 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 of the Code of West Virginia, 1931, as amended (the "Act"), and an Note Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2015, as supplemented by a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2015 (collectively, the "Ordinance"), and is subject to all the terms and provisions thereof.

THIS NOTE IS ISSUED JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S: (I) SEWER REVENUE BONDS (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SERIES 1996 A, DATED DECEMBER 10, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,575,902 (THE "SERIES 1996 A BONDS"); (II) SEWER REVENUE BONDS (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), SERIES 2000 A, DATED JUNE 28, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,050,000 (THE "SERIES 2000 A BONDS"); (III) SEWER SYSTEM REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 5, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$543,900 (THE "SERIES 2001 A BONDS"); AND (IV) SEWER REVENUE BONDS (WEST VIRGINIA SRF PROGRAM), SERIES 2009 A, DATED NOVEMBER 12, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,910,778 (THE "SERIES 2009 A BONDS").

The principal of and interest on this Note are payable solely from and secured by a first lien on (1) the proceeds of any revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes; and (2) Surplus Revenues, if any, as defined in the Ordinance. This Note does not constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, nor shall the City be obligated to pay the same or the interest hereon except from the sources set forth above.

This Note and the interest thereon are, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

Subject to the requirements for transfer set forth below, this Note is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia. This Note is transferable only by the transfer of registration upon the books of the Registrar by the Owner in person or by its attorney duly authorized in writing, upon surrender hereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner or its duly authorized attorney.

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 Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Note, together with all other obligations of the City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

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

This Note shall not be valid or obligatory unless authenticated and registered by the Registrar by the execution of the Registrar's Certificate of Authentication and Registration attached hereto and incorporated herein.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_ this Note of the City of Nitro, and does hereby irrevocably constitute and appoint \_\_\_\_\_, attorney to transfer said Note on the books of said City with full power of substitution in the premises.

DATED: \_\_\_\_\_

IN THE PRESENCE OF: \_\_\_\_\_

## EXHIBIT C

### CITY OF NITRO, WEST VIRGINIA

#### NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on October \_\_\_\_, 2015, the Council of the City of Nitro, West Virginia (the "City") adopted an ordinance which, among other things:

1. Authorized the acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the City's existing sewerage system (the "System"), the temporary financing of such costs thereof through the issuance of not more than \$9,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes (the "Notes"), and the permanent financing of such costs thereof through the issuance of not more than \$10,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, from time to time in one or more series (the "Bonds").

2. Directed that the Notes and the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution.

3. Directed the continuation of the revenue fund and the disposition of the System revenues; provided for the payment of operating expenses of the System and debt service on the Bonds; directed the creation of sinking funds and reserve accounts for the Bonds and continuation of the renewal and replacement fund; and directed the creation of a bond construction trust fund and the disbursement of the Note and Bond proceeds.

4. Provided that the Bonds shall not be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, 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 such Net Revenues; provided certain conditions for the issuance of additional bonds.

5. Provided that the Notes shall not be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the proceeds of the Bonds to be sold to the West Virginia Water Development Authority on behalf of the SRF Program.

6. Provided for insurance coverage on the Project and the System, enforcement of collection of fees, rates or other charges for the System and other covenants in favor of the registered owners; established the events of default and the remedies of the registered owners; and provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.



The City contemplates the issuance of the Notes and 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 Nitro at a regular meeting on \_\_\_\_\_, 2015, at \_\_\_\_\_ p.m., in the Council Chambers, City Hall, Nitro, 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 of the City on \_\_\_\_\_, 2015, is on file with the Recorder for review by interested persons at the City Hall during regular office hours, to-wit: 8:00 a.m. to 4:00 p.m., Monday through Friday.

/s/ \_\_\_\_\_  
Recorder of the City of Nitro,  
West Virginia

CITY OF NITRO  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

NOTES SUPPLEMENTAL PARAMETERS RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, REDEMPTION PROVISION AND OTHER TERMS OF THE SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015, OF THE CITY OF NITRO; AUTHORIZING AND APPROVING AN INDENTURE, TAX CERTIFICATE, TAX COMPLIANCE POLICY, CONTINUING DISCLOSURE AGREEMENT, CONTINUING DISCLOSURE POLICY, PRELIMINARY OFFICIAL STATEMENT, OFFICIAL STATEMENT AND REGISTRAR AGREEMENT; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH NOTES; DESIGNATING A REGISTRAR, TRUSTEE AND PAYING AGENT; MAKING OTHER PROVISIONS AS TO THE NOTES; APPROVING AND AUTHORIZING PAYMENT OF INVOICES;

WHEREAS, the city council (the "Governing Body") of the City of Nitro (the "Issuer") has duly and officially adopted a Bond and Note Ordinance on October 20, 2015, effective November 17, 2015 (the "Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING SEWERAGE SYSTEM OF THE CITY OF NITRO; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$10,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, FROM TIME TO TIME IN ONE OR MORE SERIES AS DESIGNATED IN SUPPLEMENTAL RESOLUTIONS, OF THE CITY OF NITRO, THE PROCEEDS OF WHICH, SHALL BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF NITRO WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, TO PERMANENTLY FINANCE THE COST OF SUCH DESIGN, ACQUISITION AND CONSTRUCTION, TO FUND RESERVE ACCOUNTS FOR SUCH BONDS AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; AUTHORIZING THE ISSUANCE OF NOT MORE THAN \$9,000,000 IN

AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM BOND ANTICIPATION NOTES, TO TEMPORARILY FINANCE A PORTION OF THE COST OF SUCH DESIGN, ACQUISITION AND CONSTRUCTION; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AND ADOPTING OTHER PROVISIONS RELATED THERETO.

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

WHEREAS, the Ordinance provides for the issuance of the Sewerage System Bond Anticipation Notes, Series 2015 (the "Notes"), of the Issuer, in the aggregate principal amount of not more than \$9,000,000, all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"); and in the Ordinance it is provided that the exact principal amount, date, maturity date, interest rate, interest and principal payment dates, redemption provision and other terms of the Notes should be established by a Supplemental Resolution thereto and that other matters relating to the Notes be therein provided for;

WHEREAS, the Notes are proposed to be purchased by the Crews & Associates, Inc. (the "Original Purchaser");

WHEREAS, the Notes are proposed to be purchased pursuant to a Notes Purchase Agreement between the Original Purchaser and the Issuer, to be dated the date of execution thereof and in general form attached hereto and incorporated herein by reference (the "Purchase Agreement");

WHEREAS, in order to issue the Notes it is necessary to appoint a Registrar, Paying Agent and Trustee, and approve a Notes Purchase Agreement, a Continuing Disclosure Agreement, an Indenture, a Registrar Agreement, a Preliminary Official Statement and an Official Statement and other matters pertaining to the Notes;

WHEREAS, the Governing Body has determined that the Mayor shall be empowered and authorized to execute the Purchase Agreement, within the parameters set forth herein, at such time as such person shall determine most advantageous to the District; and

WHEREAS, the Governing Body deems it essential and desirable that this Resolution be adopted, that the Purchase Agreement, the Continuing Disclosure Agreement, the Indenture and the Registrar Agreement hereinafter provided for be entered into by the Issuer, that the Official Statement relating to the Notes, hereinafter described, be approved, that the Issuer's Mayor be authorized to enter into the Purchase Agreement within the parameters hereby approved by the Governing Body, and that other matters relating to the Notes be herein provided for all in accordance with the Ordinance.

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

Section 1. A. Pursuant to the Ordinance and the Act, this Notes Supplemental Parameters Resolution is adopted and there are hereby authorized and ordered to be issued the Notes. The Notes shall be issued in the aggregate principal amount not to exceed \$7,000,000, bear interest at a rate not to exceed 3%, payable semiannually on each January 1 and July 1, commencing July 1, 2016, as determined by the Certificate of Determinations and shall mature no later than January 1, 2019, all as shall subsequently be approved by the Mayor pursuant to the execution and delivery by the Mayor of a Certificate of Determinations with respect to the Notes, dated the date of the Notes Purchase Agreement, the form of which is attached hereto as EXHIBIT A and approved hereby (the "Notes Certificate of Determinations"); provided however, that the specific terms of the Notes shall be as determined by the Mayor at the time of the execution of the Note Purchase Agreement and as approved by the Mayor in the Certificate of Determinations.

B. Proceeds of the Notes shall be deposited in the Notes Construction Trust Fund created in the Indenture and applied to the costs of the Project and the costs of issuance of the Notes. The Utility Board is hereby authorized to review and approve the costs of the Project.

C. The principal of the Notes shall be payable in lawful money of the United States of America at the address of the Noteholder set forth in the Note Register, with the final payment to be made only upon delivery of the Notes to the Registrar for cancellation. Payment of interest on any Notes shall be made on each Interest Payment Date to the Noteholder at the close of business on the Regular Record Date for such Interest Payment Date by check or draft mailed to the person who is the registered owner of such Notes and at the address appearing on the Note Register at the close of business on the Regular Record Date pertaining to such Interest Payment Date, or at the option of any Registered Owner of \$1,000,000 or more of the Series 2015 Notes, by wire transfer to a domestic bank account specified in writing at least 5 days prior to the Record Date by such Registered Owner. If and to the extent the Issuer shall default in the payment or provision for payment of interest on any Notes on any Interest Payment Date, such interest in default shall cease to be payable to the person who was the registered owner of such Notes as of the Regular Record Date. Whenever moneys become available for the payment of such defaulted interest, the Registrar shall establish a Special Record Date for the payment of such defaulted interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment, and the Registrar shall cause notice of the proposed payment and of such Special Record Date to be mailed by first class mail, postage prepaid, to the Noteholder at its address as it appears on the Note Register not less than 10 days prior to such Special Record Date. Such notice having been so mailed, the defaulted interest shall be payable to the persons who are the registered owners of the Notes (or their respective predecessor Notes) at the close of business on such Special Record Date.

D. The Notes are to be paid from the proceeds of bonds to be issued, from time to time, to the Authority at the direction of the DEP. The Issuer commits to take all actions necessary to issue the bonds, from time to time, to timely provide funds to pay the Notes as they become due and payable. In the event that funds are not available from the Authority through the CWSRF to purchase the bonds, the Issuer commits to issue bonds to another lender to provide funds to pay the Notes. The Issuer hereby commits that it will not issue any bonds

payable from the Net Revenue of the System, except for the bonds to pay the Notes, until the Notes are paid in full.

Section 2. The Notes Purchase Agreement by and between the Original Purchaser and the Issuer, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved, and directed. The Mayor shall execute and deliver the Notes Purchase Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Notes Purchase Agreement by the Mayor shall be conclusive evidence of any approval required by this Section, and authorization of any action required by the Note Purchase Agreement relating to the issuance and sale of the Notes, including the payment of all necessary fees and expenses in connection therewith.

Section 3. A. The Notes shall be secured by a trust indenture (the "Indenture") to be entered into between the Issuer and The Huntington National Bank, as Trustee, the form of which is attached hereto as EXHIBIT B and approved hereby. The Mayor shall execute and deliver the Indenture with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Indenture by the Mayor shall be conclusive evidence of any approval required by this Section.

B. The Trustee is hereby authorized to pay the Costs of Issuance of the Notes from the Costs of Issuance Fund created under the Indenture. The Mayor is hereby authorized to submit a requisition to the Trustee evidencing the Costs of Issuance.

Section 4. A. The Tax Certificate, to be dated the date of execution and delivery of the Notes (the "Tax Certificate"), and executed and delivered by the Issuer, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Tax Certificate with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Tax Certificate by the Mayor shall be conclusive evidence of any approval required by this Section.

B. The Tax Compliance Policy adopted on September 17, 2013, is hereby replaced by the Tax Compliance Policy attached hereto as EXHIBIT C and incorporated herein by reference. The Issuer hereby approves the replacement Tax Compliance Policy.

Section 5. A. The Continuing Disclosure Agreement, to be dated the date of execution and delivery of the Notes (the "Disclosure Agreement"), by and between the Issuer and the Dissemination Agent named therein, substantially in the form included in the Official Statement to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Disclosure Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Disclosure Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

B. The Issuer hereby approves the Continuing Disclosure Policy attached hereto as EXHIBIT D and incorporated herein by reference.

Section 6. The distribution by the Original Purchaser of a preliminary official statement (the "Preliminary Official Statement") attached hereto as EXHIBIT E and (which is a "deemed final" official statement in accordance with SEC Rule 15c2-12), substantially in the form submitted to this meeting is hereby ratified and approved. The certificate of the Issuer relating to compliance with SEC Rule 15c2-12 and the execution and delivery thereof by the Mayor is hereby approved. The official statement (the "Official Statement") to be substantially in the form of the Preliminary Official Statement, (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the Mayor) and the distribution of counterparts or copies thereof by the Original Purchaser are hereby approved. The Mayor shall execute and deliver the Official Statement with such changes, insertions and omissions as may be approved. The execution of the Official Statement by the Mayor shall be conclusive evidence of any approval required by this Section.

Section 7. The Registrar Agreement by and between the Issuer and the Registrar designated herein, substantially in the form to be approved pursuant to the execution and delivery by the Mayor of the Certificate of Determinations, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Registrar Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Registrar Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

Section 8. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia, as the Paying Agent for the Notes.

Section 9. The Issuer hereby appoints and designates The Huntington National Bank, Charleston, West Virginia, as the Trustee and Registrar for the Notes.

Section 10. 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 Notes to the end that the Notes may be delivered on a timely basis to the Original Purchaser pursuant to the Purchase Agreement, including a DTC Letter of Representations. The Mayor is hereby authorized to execute the DTC Blanket Letter of Representations and file it with the DTC.

Section 11. The notice addresses for the Paying Agent, Trustee, Registrar and Original Purchaser shall be as follows:

PAYING AGENT  
West Virginia Municipal Bond Commission  
900 Pennsylvania Avenue, Suite 1117  
Charleston, West Virginia 25301  
Attention: Executive Director

TRUSTEE AND REGISTRAR  
The Huntington National Bank  
525 Vine Street, 14<sup>th</sup> Floor  
Cincinnati, OH 45202  
ATTN: Corporate Trust Department

ORIGINAL PURCHASER  
Crews & Associates, Inc.  
300 Summers Street, Suite 930  
Charleston, West Virginia 25301-1631

Section 12. The issuance of the Notes 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 13. The Issuer hereby covenants and agrees that it will not permit at any time or times any of the proceeds of the Notes or any other funds of the Issuer to be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any of the Notes to be an “arbitrage bond” as defined in Section 148 of the Code, and the regulations promulgated pursuant thereto. The Mayor of the Issuer is authorized and directed to execute and deliver such further instruments or agreements as shall be required to provide further assurances of the Issuer's compliance with this covenant.

Section 14. The Issuer hereby designates the Notes as “qualified tax-exempt obligations” for purposes of Section 265(b)(3)(B) of the Code and covenants that the Notes do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income tax purposes (excluding, however, obligations issued to currently refund any obligation of the Issuer to the extent the amount of the refunding obligation does not exceed the amount of the refunded obligation and private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code), have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 2015, all as determined in accordance with the Code.

Section 15. The Mayor and Recorder, and all other appropriate officers and employees of the Issuer are hereby authorized, empowered and directed to do any and all things proper and necessary to cause the Notes to be duly and properly issued by the Issuer and delivered to the Original Purchaser as herein authorized and to otherwise facilitate the transaction contemplated by this Notes Supplemental Parameters Resolution, and no further authority shall be necessary to authorize any such officers or employees to give such further assurance and do such further acts as may be legally required.

Adopted this 17<sup>th</sup> day of November, 2015.

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Mayor



CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the City of Nitro on the 17<sup>th</sup> day of November, 2015.

Dated: December 3, 2015.

[SEAL]

---

Recorder

**EXHIBIT A**

**City of Nitro  
Sewerage System Bond Anticipation Notes, Series 2015**

**CERTIFICATE OF DETERMINATIONS**

The undersigned, \_\_\_\_\_, Mayor of the City of Nitro (the "Issuer"), in accordance with the Notes Supplemental Parameters Resolution adopted by the City Council of the Issuer on November 17, 2015 (the "Supplemental Parameters Resolution"), with respect to the Issuer's Sewerage System Bond Anticipation Notes, Series 2015 (the "Notes"), hereby finds and determines as follows:

1. The Notes shall be dated December \_\_, 2015 and shall bear interest payable on January 1 and July 1 of each year commencing July 1, 2016.

2. The Notes shall be issued in the aggregate principal amount of \$ \_\_\_\_\_, at a true interest cost of \_\_\_\_%. Such interest rates do not exceed 3.00%, being the maximum interest rate authorized by the Supplemental Parameters Resolution.

3. The Notes shall mature in the amounts and on the dates set forth on Schedule 1 attached hereto and incorporated herein.

4. The Notes shall bear interest at the rates and produce the yields set forth on Schedule 1 attached hereto and incorporated herein.

5. The Notes shall be sold to Crews & Associates, Inc., Charleston, West Virginia (the "Underwriter"), pursuant to the terms of the Notes Purchase Agreement by and between the Underwriter and the Issuer, the final form of which is hereby approved, at an aggregate purchase price of \$ \_\_\_\_\_ (representing par value less an Underwriter's discount of \$ \_\_\_\_\_ and [a net original issue premium of \$ \_\_\_\_\_]), (the "Closing Date").

6. The forms of the Official Statement, the Continuing Disclosure Agreement, Indenture and the Registrar Agreement attached hereto under Exhibit A are hereby approved.

The undersigned hereby certifies that the foregoing terms and conditions of the Notes are within the parameters prescribed by the Supplemental Parameters Resolution, and the Notes may be issued with such terms and conditions as authorized by the Supplemental Parameters Resolution.

WITNESS my signature this \_\_ day of November, 2015.

CITY OF NITRO

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

Schedule 1

Maturity Schedule

SERIES 2015 NOTE TERMS

Note No.	Maturity Date	Principal Amount	Interest Rate	Price or Yield
NR-1	1/1/2017	\$2,000,000		
NR-2	1/1/2018	\$2,000,000		
NR-3	1/1/2019	\$ _____ *		

\*Estimate, subject to change.

**EXHIBIT B**  
**TRUST INDENTURE**

## **EXHIBIT C**

### **TAX COMPLIANCE POLICY**

#### **City of Nitro, West Virginia Post-Issuance Tax Compliance Procedures For Tax-Exempt Bonds**

**November 17, 2015**

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt bonds (the “Bonds”) issued by the City of Nitro, West Virginia (the “City”) so as to maximize the likelihood that all applicable post-issuance requirements of the applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations promulgated thereunder (“Treasury Regulations”) needed to preserve the tax-exempt status of the Bonds are met. This Policy establishes a permanent, ongoing structure of practices and procedures that will facilitate compliance with the requirements to maintain the tax-exempt status of individual debt obligations.

The City reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The City also reserves the right to change these policies and procedures from time to time.

#### **General**

Inasmuch as the City is an issuer of Bonds (including refunding Bonds) for governmental purposes or is a responsible conduit issuer authorizing the issuance of 501(c)(3) Bonds or Bonds (including refunding Bonds) for certain “exempt facilities” (e.g., solid waste disposal facilities, sewage facilities, water furnishing facilities, etc.), the City now identifies post-issuance tax compliance procedures for all Bonds authorized by the City. These post-issuance tax compliance procedures set forth the procedures for the City for all Bonds issued by the City and, in the case of Bonds for which the City is a conduit issuer, the City’s requirements of all entities receiving the benefit of the Bond issue (whether through a loan, a lease or otherwise, the “Borrower”), concerning these procedures. All Borrowers shall cause satisfactory policies and procedures to be put in place. Attachment A provides a sample of what the City deems satisfactory.

#### **Post-Issuance Compliance Requirements**

##### **External Advisors / Documentation**

The City and the Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status. Those requirements and procedures shall be documented in the tax certificate or tax regulatory agreement (the “Tax Certificate”) and/or other documents finalized at or before issuance of the Bonds. Those requirements and procedures shall include future compliance with

applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds.

The City and the Borrower also shall engage bond counsel and other legal counsel and advisors, as needed, for consultation following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with any potential changes in use of Bond-financed or refinanced assets.

When necessary, the City shall engage and shall encourage or require any Borrower to engage expert advisors (each a “Rebate Service Provider”) to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds in the manner more fully set forth in the Model Borrower Procedures (Attachment A hereto).

Unless otherwise provided by the indenture relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or other financial institution, and the investment of Bond proceeds shall be managed by the City or, in the event the City is the conduit issuer of the Bonds, the Borrower. The City or, in the event the City is the conduit issuer of the Bonds, the Borrower shall prepare (or cause the trustee to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statement shall be delivered to the City if it so requests.

#### Compliance Officer

The [Clerk] [Treasurer] [Business Manager] [Finance Director][Administrator] (the “Compliance Officer”) shall be responsible for monitoring post-issuance compliance issues. The Compliance Officer will coordinate procedures for record retention and review of such records. All documents and other records relating to tax-exempt obligation issued by the City shall be maintained by or at the direction of the Compliance Officer. In maintaining such documents and records, the Compliance Officer will comply with applicable Internal Revenue Service (“IRS”) requirements, such as those contained in Revenue Procedure 97-22.D. The Compliance Officer shall be aware of options for voluntary corrections for failure to comply with post-issuance compliance requirements (such as remedial actions under Section 1.141-12 of the Regulations and the Treasury's Tax-Exempt Bonds Voluntary Closing Agreement Program) and take such corrective action when necessary and appropriate. The Compliance Officer will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.

The City or, in the event the City is the conduit issuer of the Bonds, the Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to undertake the tasks listed above. The City shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

All relevant records and contracts shall be maintained as described below.

### Arbitrage Rebate and Yield

The City or, in the event the City is a conduit issuer of the Bonds, the Borrower shall be responsible for compliance with all requirements under Federal arbitrage regulations. The City or, as more fully set forth in the Model Borrower Procedures, if applicable, the Borrower is responsible for the following:

A. Determining the likelihood of complying with an arbitrage rebate exemption;

B. If necessary, (i) engaging the services of a Rebate Service Provider, (ii) prior to each rebate calculation date, causing the trustee to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider, and (iii) if necessary, contributing, or causing the trustee to contribute any required annual payments into any rebate fund;

C. Providing to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;

D. Monitoring efforts of the Rebate Service Provider;

E. Assuring payment of required rebate mounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed or matures;

F. During the construction period of each capital project financed in whole or in part by Bonds, monitoring the investment and expenditure of Bond proceeds and consulting with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months or 18 months, as applicable, following the issue date of the Bonds; and

G. Retaining copies of all arbitrage reports and trustee statements as described below under "Record Keeping Requirements" and, upon request, providing such copies to the City.

The City or, in the event the City is the conduit issuer of the Bonds, the Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to undertake the tasks listed above. The Borrower shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

For the Purposes of Complying with the Code's arbitrage restrictions, the Compliance Officer will:

A. Confirm that a certification of the initial offering prices of the tax-exempt obligations with such supporting data, if any, required by bond counsel, is included in the closing documents for the issue.

B. Confirm that a computation of the yield on such issue from the Issuer's financial advisor or bond counsel (or an outside arbitrage rebate specialist) is contained in the closing documents.



C. Coordinate the tracking of expenditures, including the expenditure of any investment earnings. If the project(s) to be financed with the proceeds of tax-exempt obligations will be funded with multiple sources of funds, confirm that the Issuer has adopted an accounting methodology that maintains each source of financing separately and monitors the actual expenditure of proceeds of such tax-exempt obligations.

D. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures. This procedure shall include an examination of the expenditures made with proceeds of the tax-exempt obligations within 18 months after each project financed by tax-exempt obligations is placed in service and, if necessary, a reallocation of expenditures in accordance with Section 1.148-6(d) of the Treasury Regulations.

E. Monitor compliance with the applicable “temporary period” (as defined in the Code and Treasury Regulations) exceptions for the expenditure of proceeds of the issue, and provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.

F. Ensure that investments acquired with proceeds of such issue are purchased at fair market value. In determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used.

G. Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.

H. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.

I. Identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.

J. Monitor compliance with six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.

K. Procure a timely computation of any rebate liability and, if rebate is due, to file a Form 8038-T and to arrange for payment of such rebate liability.

L. Arrange for timely computation and payment of “yield reduction payments” (as such term is defined in the Code and Treasury Regulations), if applicable.

#### Use of Bond Proceeds and Bond-Financed or Refinanced Assets

The City or, in the event the City is a conduit issuer of the Bonds, the Borrower shall be responsible for monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of

the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

A. Maintaining records identifying the assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before bond issuance), including a final allocation of Bond proceeds as described below under “Record Keeping Requirements”;

B. Consulting with bond counsel and other legal counsel and advisers in the review of any change in use of Bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

C. Conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

D. To the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified Bonds, if such counsel advises that a remedial action is necessary;

E. When required, to the extent that Bond proceeds were used to acquire an existing building, confirming that qualified rehabilitation expenditures in an amount equal to at least 15% of the amount of such proceeds were made no later than 24 months after the later of (1) the date of issuance of the Bonds, or (2) the date of acquisition of the building;

F. When required, confirming that less than 25% of Bond proceeds were used to acquire land;

G. With respect to facilities that dispose of solid waste by reconstituting, converting or otherwise recycling it into material that is not waste, determining annually whether solid waste (as identified or described at the time of issuance of the Bonds) constitutes at least 65%, by weight or volume, of the total materials introduced into the reconstituting, converting or recycling process. This provision is subject to amendment or deletion depending on the content of any new regulations promulgated by the United States Treasury regarding the definition of solid-waste disposal facilities; and

H. With respect to other types of exempt facilities, adopting any such procedures that bond counsel deems appropriate to periodically assess whether such facility continues to qualify as an exempt facility.

### **Private Activity Concerns**

The following polices relate to the monitoring and tracking of private uses and private payments with respect to facilities financed with the Obligations. The Compliance Officer will:

A. Maintain records determining and tracking facilities financed with tax-exempt obligations and the amount of proceeds spent on each facility.

B. Maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of an issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.

C. Monitor private use of financed facilities to ensure compliance with applicable limitations on such use. Examples of potential private use include:

1. Sale of the facilities, including sale of capacity rights;
2. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;
3. Management contracts (in which the Issuer authorizes a third party to operate a facility, e.g., cafeteria) and research contracts;
4. Preference arrangements (in which the Issuer permits a third party preference, such as parking in a public parking lot);
5. Output contracts or other contracts for use of utility facilities (including contracts with large utility users);
6. Development agreements which provide for guaranteed payments or property values from a develop

#### Record Keeping Requirement

The City or, in the event the City is a conduit issuer of the Bonds, the Borrower shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least 3 years:

A. A copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Bonds;

B. A copy of all material documents relating to capital expenditures financed or refinanced by Bond process, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds and the final completion report filed pursuant to the loan agreement, lease or similar document; and

C. A copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statement, in connection with any investment agreements, and copies of all bidding documents, if any.

The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to retain the records listed above. The Borrower shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

Reissuance

The Compliance Officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance for federal tax purposes.

## Attachment A

### **SAMPLE City of Nitro, West Virginia Borrower Post-Issuance Tax Compliance Procedures For Tax-Exempt Bonds**

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt bonds (the “Bonds”) issued on behalf of \_\_\_\_\_ (the “Borrower”) so as to maximize the likelihood that all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds are met. The Borrower reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant provided, any exceptions to these procedures shall not be made without engaging bond counsel or other legal counsel for consultation for a determination that such exception would not cause the Bonds to lose their tax-exempt status and notification to the City of such exception. The Borrower also reserves the right to change these policies and procedures from time to time. The Borrower shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

#### **General**

The Borrower now identifies post-issuance tax compliance procedures for all Bonds issued on its behalf.

#### **Post-Issuance Compliance Requirements**

##### External Advisors / Documentation

The Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status. The Borrower also shall engage bond counsel and other legal counsel and advisors, as needed, for consultation following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with any potential changes in use of Bond-financed or refinanced assets.

The Borrower shall be responsible for determining (or obtain expert advice to determine) whether arbitrage rebate calculations have to be made for the Bond issue. If it is determined that such calculations are or are likely to be required, the Borrower shall engage expert advisors (each a “Rebate Service Provider”) to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds, or else shall ensure that it has adequate financial, accounting and legal resources of its own to make such calculations, Borrower shall make any rebate payments required on a timely basis.

Unless otherwise provided by the indenture relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or other financial institution, and the investment of Bond proceeds shall be managed by the Borrower. The Borrower shall prepare (or cause the trustee or other financial institution to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statements shall be delivered to the bond issuer if it so requests.

#### Arbitrage Rebate and Yield

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for overseeing compliance with arbitrage rebate requirements under federal tax regulations:

1) If at the time of Bond Issuance, based on reasonable expectations set forth in the Tax Certificate or Tax Regulatory Agreement (the "Tax Certificate"), it appears likely that the Bond issue will qualify for an exemption from the rebate requirement, the Borrower may defer taking any of the actions set forth in the subsection (2). Not later than the time of completion of construction or acquisition of the Bond-financed project, and depletion of all funds from the project fund, the Borrower shall make a determination if expenditure of the Bond proceeds qualified for exemption from the rebate requirements based on spending within a 6-month or 18-month period after issuance. If rebate exemption is determined to be applicable, Borrower shall prepare and keep in the permanent records of the Bond issue a memorandum evidencing this conclusion together with records of expenditure to support such conclusion. If the transaction does not qualify for rebate exemption, Borrower shall initiate the steps set forth in (2) below.

2) If at the time of Bond issuance it appears likely that arbitrage rebate calculations will be required, or upon determination that calculations are required pursuant to (1) above, Borrower shall:

- if necessary, (i) engage the services of a Rebate Service Provider, (ii) prior to each rebate calculation date, cause the trustee or other financial institution investing bond proceeds to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider, and (iii) if necessary, contributing, or causing the trustee to contribute any required annual payments into any rebate fund;
- provide to the Rebate Service Provider additional documents and information reasonable requested by the Rebate Service Provider;
- monitor efforts of the Rebate Service Provider;
- assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed or matures;

- during the construction period of each capital project financed in whole or in part by Bonds, monitor the investment and expenditure of Bond proceeds and consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months, as applicable, following the issue date of the Bonds;
- retain copies of all arbitrage reports and trustee statements as described below under “Record Keeping Requirements” and, upon request, providing such copies to the Bond issuer; and
- in lieu of engaging an outside Rebate Service Provider, the Borrower may make a determination that it has sufficient capabilities using its own personnel, supported by its regular accounting and legal advisers, to be able to make the required rebate calculations. Such determination shall be evidenced in writing with specific reference to the personnel and advisers to carry out the calculations, and such written determination shall be maintained in the records of the Bond transaction.

Use of Bond Proceeds and Bond-Financed or Refinanced Assets:

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for:

- monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before Bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before Bond issuance), including a final allocation of Bond proceeds as described below under “Record Keeping Requirements”;
- consulting at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- to the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced

assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified Bonds, if such counsel advises that a remedial action is necessary;

- when required, to the extent that Bond proceeds were used to acquire an existing building, confirming that qualified rehabilitation expenditures in an amount equal to at least 15% of the amount of such proceeds were made no later than 24 months after the later of (1) the date of issuance of the Bonds, or (2) the date of acquisition of the building;
- when required, confirming that less than 25% of Bond proceeds were used to acquire land; and
- [with respect to facilities that dispose of solid waste by reconstituting, converting or otherwise recycling it into material that is not waste, determining annually whether solid waste (as identified or described at the time of issuance of the Bonds) constitutes at least 65%, by weight or volume, of the total materials introduced into the reconstituting, converting or recycling process. This provision is subject to amendment or deletion depending on the content of any new regulations promulgated by the United States Treasury regarding the definition of solid-waste disposal facilities;]

All relevant records and contracts shall be maintained as described below.

#### Record Keeping Requirement

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least 3 years:

- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Bonds;
- a copy of all material documents relating to capital expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds and the Final Completion Report filed pursuant to the Loan Agreement; and
- a copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any.



DATED: \_\_\_\_\_

[BORROWER]

By \_\_\_\_\_  
[Title]

**EXHIBIT D**

**CONTINUING DISCLOSURE POLICY**

**CITY OF NITRO, WEST VIRGINIA  
CONTINUING DISCLOSURE COMPLIANCE PROCEDURES**

ARTICLE I	–	DEFINITIONS AND RULES OF CONSTRUCTION .....	1
Section 1.		Definitions .....	1
Section 2.		Rules of Construction.....	3
ARTICLE II	–	GENERAL PRINCIPLES.....	3
ARTICLE III	–	DISCLOSURE MANAGER AND DISCLOSURE COORDINATOR.....	3
Section 1.		Appointment of Disclosure Manager .....	3
Section 2.		Duties of the Disclosure Manager .....	3
Section 3.		Appointment of Disclosure Coordinator .....	4
Section 4.		Duties of the Disclosure Coordinator .....	4
ARTICLE IV	–	LISTED EVENTS REQUIREMENTS .....	5
Section 1.		General .....	5
Section 2.		Listed Events for Bonds Issued Prior to December 1, 2010.....	5
Section 3.		Listed Events for Bonds Issued on and after December 1, 2010.....	5
ARTICLE V	–	ANNUAL REPORT REQUIREMENTS.....	6
ARTICLE VI	–	FILING AND NOTICE REQUIREMENTS.....	7
Section 1.		Annual Reports and Event Notices .....	7
Section 2.		Required Notices .....	7
ARTICLE VII	–	VOLUNTARY DISCLOSURES .....	7
ARTICLE VIII	–	DOCUMENT RETENTION POLICY .....	7
Exhibit A:		Rule 15c2-12 (As Amended).....	A-1
Exhibit B:		City and Outstanding Debt .....	B-1
Exhibit C:		Rating History for City Outstanding Debt.....	C-1
Exhibit D:		Required Information for Annual Reports for City .....	D-1
Exhibit E:		Required Notices .....	E-1

## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

#### Section 1. Definitions.

The following capitalized terms shall have the following meanings in these Procedures:

“Annual Report” shall mean any annual report to be filed by the City in connection with its obligations under any Continuing Disclosure Certificate executed in accordance with Rule 15c2-12 under the Securities Exchange Act of 1934.

“City” shall mean the City of Nitro, West Virginia, its successors and assigns.

“City Counsel” shall mean the counsel appointed to serve the City.

“Bonds” shall mean any bonds, certificates of participation, notes or any other evidence of indebtedness issued by or on behalf of the City which is subject to Rule 15c2-12 as listed on Exhibit B attached hereto.

“Bond Insurer” shall mean an issuer of a financial guaranty insurance or municipal bond insurance policy guaranteeing the scheduled payment of principal of and interest on an outstanding issue of Bonds when due.

“Continuing Disclosure Certificate” shall mean each continuing disclosure certificate, undertaking or agreement executed and delivered by the City in connection with an issue of Bonds.

“Credit Facility Provider” shall mean a bank providing a direct-pay letter of credit or other security or liquidity instrument in connection with an issue of Bonds which secures the payment of the principal or purchase price, if any, of and interest on an outstanding issue of Bonds when due.

“Disclosure Coordinator” shall mean the person or persons designated by the Disclosure Manager to assist him in taking such action necessary or desirable to comply with the terms of the Continuing Disclosure Certificates, as provided in Article III hereof.

“Disclosure Counsel” shall mean a firm of nationally recognized standing in matters pertaining to the disclosure obligations under Rule 15c2-12 of the Securities and Exchange Commission of the United States of America, duly admitted to the practice of law before the highest court of any state of the United States of America.

“Disclosure Manager” shall mean the person appointed by the City who is responsible for compliance with the terms of the Continuing Disclosure Certificates, as provided in Article III.

“EMMA” shall mean the MSRB’s Electronic Municipal Market Access system or any other successor thereto as designated by the SEC or the MSRB.

“Event Notice” shall mean any notice of the occurrence of a Material Event or Listed Event.

“Listed Event” shall mean any event described in Section 3 of Article IV hereof.

“Material Event” shall mean any event described in Section 2 of Article IV hereof.

“MSRB” shall mean Municipal Securities Rulemaking Board.

“Official Statement” shall mean any Preliminary Official Statement, final Official Statement or any other disclosure document that the City prepared in connection with the issuance and sale of any Bonds.

“Paying Agent” shall mean any bank, trust company, banking association or financial institution appointed to perform the functions of a paying agent for an issue of Bonds.

“Procedures” shall mean these Continuing Disclosure Procedures.

“Rating Agency” shall mean each of Moody’s Investor’s Service, Standard & Poor’s Rating Services, a Standard & Poor’s Financial Services LLC business, and Fitch Ratings Inc.

“Rule 15c2-12” shall mean Rule 15c2-12(b)(5) adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

“Trustee” shall mean the bank, trust company, national banking association or other financial institution appointed as a trustee for an issue of Bonds.

Section 2. **Rules of Construction.** The singular form of any word used herein, including the terms defined in this Section II, shall mean and include the plural number and vice versa, unless the context otherwise requires. Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders. The headings or titles of the several Articles and Sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof. The Material Events listed in Section 2 of Article IV hereof and the Listed Events listed in Section 3 of Article IV hereof are referred to herein as “Listed Events”. Each Exhibit shall be amended or supplemented from time to time as Bonds mature or are redeemed and as Bonds that are subject to Rule 15c2-12 are issued. Reference to each Exhibit hereto shall refer to such Exhibit as it may be so amended and supplemented.

## ARTICLE II

### GENERAL PRINCIPLES

The City is committed to complete and accurate market disclosure in accordance with the disclosure requirements under the federal securities laws, including rules and regulations promulgated by the SEC and the MSRB, as those rules may be amended from time to time. These Procedures are approved by the City in order to achieve this objective and, in accordance therewith, may be amended and supplemented by the City from time to time. These Procedures shall be revised from time to time as necessary or desirable as Bonds mature or are redeemed and as Bonds that are subject to Rule 15c2-12 are issued.

## ARTICLE III

### DISCLOSURE MANAGER AND DISCLOSURE COORDINATOR

Section 1. **Appointment of Disclosure Manager.** The City shall appoint a Disclosure Manager to fulfill the duties set forth in Section 2 of this Article III.

Section 2. **Duties of the Disclosure Manager.**

The Disclosure Manager shall:

- (i) monitor and maintain compliance by the City with its respective Continuing Disclosure Certificates and these Procedures;
- (ii) serve as the main contact for each Disclosure Coordinator to communicate issues and information that may be included in an Event Notice or an Annual Report;
- (iii) review all proposed Listed Event Notices, Annual Reports and other filings with the EMMA system and filings for Bond Insurers, Credit Facility Providers, Paying Agents, Rating Agencies, and Trustees;
- (iv) confer with City Counsel and Disclosure Counsel regarding the City's continuing disclosure undertakings and procedures;
- (v) maintain the lists attached as Exhibits B, C, D, E and F;
- (vi) direct the Disclosure Coordinator to file any required documents; and
- (vii) take such other action as may be necessary or useful to achieve the objectives of these Procedures and to comply with all applicable federal securities laws.

Section 3. **Appointment of Disclosure Coordinator.**

The Disclosure Manager shall appoint one or more Disclosure Coordinators from time to time to fulfill the duties set forth in Section 4 of this Article III. The Disclosure Coordinators may work with other employees of the City in order to effectively comply with the objectives of these Procedures.

Section 4. **Duties of the Disclosure Coordinator.**

(A) The Disclosure Coordinator shall:

- (i) file any documents as directed by the Disclosure Manager;
- (ii) serve as a contact for City staff to communicate issues and information that may be included in an Event Notice or an Annual Report;
- (iii) maintain correspondence regarding possible Listed Events;
- (iv) keep informed regarding all of the City's public disclosures, including disclosures to the Bond Insurers, the Credit Facility Providers, the Rating Agencies, and the Trustees;
- (v) document the City's continuing disclosure filings by retaining the documents set forth in Article VIII hereof; and
- (vi) take such other action as may be necessary or useful to achieve the objectives of these Procedures and to comply with all applicable federal securities laws.

(B) In addition to the duties set forth above in clause (A), the Disclosure Coordinator shall review the list of Listed Events regularly to determine whether an event has occurred that may require a filing of an Event Notice. The Disclosure Coordinator shall regularly check the websites of and subscribe to communications (*e.g.*, news alerts, press releases, etc.) from each Rating Agency, Bond Insurer or Credit Facility Provider in order to be aware of any Rating Change as described in the Continuing Disclosure Certificates. The Disclosure Coordinator shall contact relevant City staff on a regular basis to

ascertain whether any events have occurred which would constitute Listed Events under the Continuing Disclosure Certificates.

## ARTICLE IV

### LISTED EVENTS REQUIREMENTS

Section 1.     **General.**

The Continuing Disclosure Certificates entered into by the City with respect to Bonds issued prior to December 1, 2010 require Event Notices to be filed upon the occurrence of any event listed in Section 2 of Article IV hereof, if material. Any such Event Notice shall be filed “in a timely manner”. The Continuing Disclosure Certificates entered into by the City with respect to Bonds issued on or after December 1, 2010 require Event Notices to be filed upon the occurrence of any event listed in Section 3 of Article IV hereof no later than 10 business days after the occurrence of such Listed Event.

Section 2.     **Listed Events for Bonds Issued Prior to December 1, 2010.**

For Bonds issued prior to December 1, 2010, pursuant to the provisions of the applicable Continuing Disclosure Certificate, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the outstanding obligation, if material, in a timely manner:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on any credit enhancements reflecting financial difficulties;
- (v) substitution of any credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions or events affecting the tax-exempt status of the securities;
- (vii) modifications to the rights of security holders;
- (viii) bond calls;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the securities; and
- (xi) rating changes.

Section 3.     **Listed Events for Bonds Issued on and after December 1, 2010.**

For Bonds issued on or after to December 1, 2010, pursuant to the provisions of the applicable Continuing Disclosure Certificate, the City shall give, or cause to be given, notice of the occurrence of any of the following Listed Events within ten (10) business days of the occurrence thereof:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;

- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (vii) modifications to rights of security holders, if material;
- (viii) bond calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the securities, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership or similar event of the obligated person (Note: For the purposes of this event, the event is considered to occur when any of the following occur: The appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental City has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental City, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental City having supervision or jurisdiction over substantially all of the assets or business of the obligated person);
- (xiii) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material.

## **ARTICLE V**

### **ANNUAL REPORT REQUIREMENTS**

Pursuant to the various Continuing Disclosure Certificates, the City must provide its respective Annual Report with respect to an issue of Bonds by the date set forth in Exhibit D attached hereto. The Disclosure Coordinator shall commence collection of information for each Annual Report at such time as he determines necessary or useful in order to timely complete and file the Annual Report. The Disclosure Coordinator shall obtain any information necessary to be included in an Annual Report that is not included in the City's audited financial statements. The Annual Report shall include the financial

information and other operating data set forth in the respective Continuing Disclosure Certificate as summarized in Exhibit D attached hereto.

In accordance with the Continuing Disclosure Certificates, if audited financial statements are not available by the date the Annual Report is required to be filed, unaudited financial statements are to be included in such Annual Reports and audited financial statements shall be filed when such statements become available. In addition, the Continuing Disclosure Certificates require the City to file a notice of any failure to provide its Annual Report, on or before the date specified in a Continuing Disclosure Certificate.

## ARTICLE VI

### FILING AND NOTICE REQUIREMENTS

#### Section 1. Annual Reports and Event Notices.

The Disclosure Manager shall file each Annual Report on such dates as provided in Exhibit D attached hereto and shall file each Event Notice as required pursuant to Article III hereof and the related Continuing Disclosure Certificate. The Disclosure Manager shall submit all filings of Annual Reports and Listed Events through EMMA or any other repository so designated by the MSRB or the SEC, unless the City is otherwise advised by a written opinion of Disclosure Counsel.

#### Section 2. Required Notices.

The Disclosure Manager shall file each notice required to be given to any Bond Insurer, Credit Facility Provider, Paying Agent, Rating Agency or Trustee as set forth in Exhibit E attached hereto.

## ARTICLE VII

### VOLUNTARY DISCLOSURES

The City's policy is to only file annual financial information and operating data and Event Notices that are required under the Continuing Disclosure Certificates and applicable federal securities laws. The Disclosure Manager may determine to file voluntary disclosure information that is not required under the Continuing Disclosure Certificates.

## ARTICLE VIII

### DOCUMENT RETENTION POLICY

In accordance with Article III hereof, the Disclosure Coordinator shall maintain the following materials for a period ending 6 years after the final maturity of an issue of Bonds:

- A. Continuing Disclosure Certificate;
- B. Annual Reports, including any EMMA transmittal letters and EMMA filing receipts;
- C. Event Notices, including any EMMA transmittal letters and EMMA filing receipts;
- D. Rating reports; and
- E. Such other information as the Disclosure Manager determines necessary or useful in accordance with the Continuing Disclosure Certificates.



**EXHIBIT A**  
**RULE 15c2-12**

**EXHIBIT B**  
**CITY OUTSTANDING DEBT**

**EXHIBIT C**  
**RATING HISTORY FOR CITY OUTSTANDING DEBT**

**EXHIBIT D**  
**REQUIRED INFORMATION FOR ANNUAL REPORTS FOR CITY OUTSTANDING DEBT**

**EXHIBIT E**  
**REQUIRED NOTICES**

**EXHIBIT E**

**PRELIMINARY OFFICIAL STATEMENT**

# The Depository Trust Company

A subsidiary of the Depository Trust & Clearing Corporation

## BLANKET ISSUER LETTER OF REPRESENTATIONS

(To be completed by Issuer and Co-Issuer(s), if applicable)

CITY OF NITRO

(Name of Issuer and Co-Issuer(s), if applicable)

NOVEMBER 17, 2015

(Date)

### The Depository Trust Company

570 Washington Blvd, 4th FL

Jersey City, NJ 07310

Attention: Underwriting Department

Ladies and Gentlemen:

This letter sets forth our understanding with respect to all issues (the "Securities") that Issuer shall request to be made eligible for deposit by The Depository Trust Company ("DTC").

Issuer is: **(Note: Issuer shall represent one and cross out the other.)**

[incorporated in] [formed under the laws of] WEST VIRGINIA

To induce DTC to accept the Securities as eligible for deposit at DTC, and to act in accordance with DTC's Rules with respect to the Securities, Issuer represents to DTC that issuer will comply with the requirements stated in DTC's Operational Arrangements, as they may be amended from time to time.

Very truly yours,

Note:

Schedule A contains statements that DTC believes accurately describe DTC, the method of effecting book-entry transfers of securities distributed through DTC, and certain related matters.

CITY OF NITRO

(Issuer)

By:

*Dave Casebolt*

(Authorized Officer's Signature)

DAVE CASEBOLT, MAYOR

(Print Name)

2009 20th STREET

(Street Address)

NITRO  
(City)

WV  
(State)

USA  
(Country)

25143  
(Zip Code)

(304) 755-0705

(Phone Number)

DCASEBOLT@CITYOFNITRO.ORG

(E-mail Address)

**DTCC**

**City of Nitro**  
**Sewerage System Bond Anticipation Notes, Series 2015**

CERTIFICATE OF DETERMINATIONS

The undersigned, Dave Casebolt, Mayor of the City of Nitro (the “Issuer”), in accordance with the Notes Supplemental Parameters Resolution adopted by the City Council of the Issuer on November 17, 2015 (the “Supplemental Parameters Resolution”), with respect to the Issuer’s Sewerage System Bond Anticipation Notes, Series 2015 (the “Notes”), hereby finds and determines as follows:

1. The Notes shall be dated December 3, 2015 and shall bear interest payable on January 1 and July 1 of each year commencing July 1, 2016.

2. The Notes shall be issued in the aggregate principal amount of \$6,735,000, at a true interest cost of 2.4329725%. Such interest rates do not exceed 3.00%, being the maximum interest rate authorized by the Supplemental Parameters Resolution.

3. The Notes shall mature in the amounts and on the dates set forth on Schedule 1 attached hereto and incorporated herein.

4. The Notes shall bear interest at the rates and produce the yields set forth on Schedule 1 attached hereto and incorporated herein.

5. The Notes shall be sold to Crews & Associates, Inc., Charleston, West Virginia (the “Underwriter”), pursuant to the terms of the Note Purchase Agreement by and between the Underwriter and the Issuer, the final form of which is hereby approved, at an aggregate purchase price of \$6,667,650 (representing par value less an Underwriter’s discount of \$67,350) on December 3, 2015 (the “Closing Date”).

6. The forms of the Official Statement, the Continuing Disclosure Agreement, Indenture and the Registrar Agreement attached hereto under Exhibit A are hereby approved.

The undersigned hereby certifies that the foregoing terms and conditions of the Notes are within the parameters prescribed by the Supplemental Parameters Resolution, and the Notes may be issued with such terms and conditions as authorized by the Supplemental Parameters Resolution.



WITNESS my signature this 24<sup>th</sup> day of November, 2015.

CITY OF NITRO

By: David Confort  
Its: Mayor

## APPENDIX A

**SCHEDULE I**

CITY OF NITRO

\$6,735,000

SEWERAGE SYSTEM BOND ANTICIPATION NOTES  
SERIES 2015

Maturity Date	Amount	Rate	Price	YIELD
1/01/2017	\$2,000,000	1.250%	100%	1.250%
1/01/2018	\$2,000,000	1.750%	100%	1.750%
1/01/2019	\$2,735,000	2.250%	100%	2.250%



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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street S.E.  
Charleston, WV 25304  
Phone: (304) 926-0495  
Fax: (304) 926-0496

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
dep.wv.gov

October 27, 2015

The Honorable Dave Casebolt  
Mayor, City of Nitro  
2009 20<sup>th</sup> Street  
Nitro, West Virginia 25143

Re: City of Nitro  
SRF No. 544273

Dear Mayor Casebolt:

This letter supplements and amends my letter of June 9, 2014 committing to purchase bonds from the City of Nitro ("City").

This letter confirms that the State Revolving Fund (SRF) commits to purchase four series of bonds, totaling \$7,884,340, from the City: \$679,519 to permanently finance the design costs on or before December 15, 2015; \$2,000,000 to prepay a portion of the City's construction financing on or before December 15, 2016; \$2,000,000 to prepay a portion of the City's construction financing on or before December 15, 2017; and \$3,204,821 to pay the remainder of the City's construction financing and to pay other costs of the project on or before December 15, 2018.

The other terms and conditions of the June 9, 2014 letter remain the same. Should you have any questions regarding this commitment, please contact me by calling (304) 926-0499 ext. 1596.

Sincerely,

Katheryn Emery, P.E.  
Program Manager  
Clean Water SRF Program

cc: Ms. Samme Gee, Esquire, Jackson Kelly  
Danny Lewis, Nitro Sanitary Board  
John H. Young, CPA, Young & Associates



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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: (304) 926-0495  
Fax: (304) 926-0496

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
dep.wv.gov

June 9, 2014

The Honorable Dave Casebolt  
Mayor, City of Nitro  
2009 20<sup>th</sup> Street  
Nitro, West Virginia 25143

RE: City of Nitro  
SRF No. 544273

Dear Mayor Casebolt:

This letter is to confirm a State Revolving Fund (SRF) commitment to purchase \$9,000,000 in bonds from the City of Nitro no later than December 1, 2017. The SRF understands that the City will issue Bond Anticipation Notes (BANs) in the amount of \$9,000,000 to provide the funds necessary to construct the project. Other standard SRF loan agreement terms and conditions will remain the same. At this time the loan is assumed to carry an interest rate of 0.5% and an annual administrative fee of 0.5% for a maximum period of 30 years. The final interest rate, fee and term will be finalized prior to closing.

At the time of loan closing, the City must deliver all standard closing documents including a certified public accountant's certificate regarding coverage and parity test requirements. Should you have any questions regarding this commitment, please contact me by calling (304) 926-0499 ext. 1596.

Sincerely,

Katheryn Emery, P.E.  
Program Manager  
Clean Water SRF Program

cc: Mr. Danny Lewis, Nitro Sanitary Board  
Ms. Samme Gee, Esq., Jackson Kelly  
Mr. Ashok Sanghavi, P.E., S&S Engineers, Inc.

Promoting a healthy environment.

CITY OF NITRO  
SEWER REVENUE BONDS, SERIES 2015 A  
(WEST VIRGINIA CWSRF PROGRAM)  
AND  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

3.1

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. PUBLIC SERVICE COMMISSION ORDER
7. RATES
8. INCUMBENCY AND OFFICIAL NAME
9. LAND AND RIGHTS-OF-WAY
10. MEETINGS
11. INSURANCE
12. A. BOND PURCHASE AGREEMENT  
B. NOTE PURCHASE AGREEMENT
13. SPECIMEN BOND AND NOTE
14. CLOSING PAYMENT
15. PUBLICATION AND PUBLIC HEARING ON ORDINANCE
16. CONFLICTS OF INTEREST
17. VERIFICATION OF SCHEDULE A
18. CLEAN WATER ACT
19. OFFICIAL STATEMENT CERTIFICATION
20. IRS INFORMATION RETURN
21. CERTIFICATION RESPONSIVE TO SECTION 6(c)(x) OF THE NOTE PURCHASE AGREEMENT
22. COUNTERPARTS

On this 3<sup>rd</sup> day of December, 2015, we, the undersigned MAYOR and the undersigned RECORDER of the City of Nitro in Kanawha and Putnam County, West Virginia (the "Issuer") hereby certify in connection with the Issuer's Sewer Revenue Bonds, Series 2015 A (West Virginia CWSRF Program) and Sewerage System Bond Anticipation Notes, Series 2015, all dated the date hereof (the "Series 2015 A Bonds," or the "Bonds" and the "Series 2015 Notes" or the "Notes"), 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 Ordinance duly enacted by the Issuer on October 20, 2015, effective November 17, 2015, and Supplemental Resolutions duly adopted by the Issuer on November 17, 2015 (collectively, the "Ordinance"), the Bond Purchase Agreement for the Bonds by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental

Protection (the “DEP”), dated December 3, 2015 (the “Bond Purchase Agreement”), and the Note Purchase Agreement for the Notes by and among the Issuer and Crews & Associates, Inc. (the Original Purchaser”), dated November 24, 2015 (the “Note Purchase 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 or the Notes, the acquisition and construction of the Project, the operation of the System, the collection or use of the revenues of the System, or the pledge and security of the Net Revenues for the Bonds or the pledge and security of the proceeds of additional revenue bonds, refunding bonds, bond anticipation notes and Surplus Revenues for the Notes; nor affecting the validity of the Bonds or the Notes 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 thereof to their respective offices; nor questioning any proceedings of the Issuer taken with respect to the authorization, issuance, sale or delivery of the Bonds or the Notes, the acquisition and construction of the Project, the operation of the System, the collection or use of the revenues of the System, or the pledge and security for the Bonds and the Notes.

3. GOVERNMENTAL APPROVALS: All applicable approvals, permits, exemptions, consents, authorizations, registrations, licenses, orders and certificates required by law for the creation and existence of the Issuer, the acquisition and construction of the Project, the operation of the System, the imposition of rates and charges and the issuance of the Bonds and the Notes have been duly and timely obtained and remain in full force and effect.

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

There are outstanding obligations of the Issuer which will rank on a parity with the Series 2015 A Bonds as to liens, pledge and source of and security for payment, being the City’s (i) \$4,575,902 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 1996 A, dated December 10, 1996 (the “Series 1996 A Bonds”); (ii) \$2,050,000 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 2000 A, dated June 28, 2000 (the “Series 2000 A Bonds”); (iii) \$543,900 Sewer Revenue Bonds (West Virginia SRF Program), Series 2001 A, dated June 5, 2001 (the “Series 2001 A Bonds”); and (iv) \$1,910,778 Sewer Revenue Bonds, (West Virginia SRF Program), Series 2009 A, dated November 12, 2009 (the “Series 2009 A Bonds”) (collectively, the “Prior Bonds”).

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; and (ii) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Series 2015 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, the Series 2015 A Bonds and the Series 2015 Notes, 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 covenants of the Prior Bonds and the Prior Ordinances.

The Series 2015 Notes shall be issued junior and subordinate to the Prior Bonds and the Series 2015 A Bonds as to liens, pledge and source of and security for payment.

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 and the Notes for the Issuer. The seal impressed upon the Bonds and the Notes 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 and the Notes, consisting upon original issuance of a single Bond, a single Note for each maturity date, dated the date hereof, by his or her manual signature; the undersigned Recorder did officially cause the seal of the Issuer to be affixed upon the Bonds and the Notes and to be attested by his or her manual signature; the Registrar did officially authenticate, register and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Bond Purchase Agreement and did officially authenticate, register and deliver the Notes to DTC on behalf of the Original Purchaser of the Notes.

6. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Order of the Public Service Commission of West Virginia (the "PSC") entered on October 17, 2014, in Case No. 14-0689-S-CN, approving the Project and the issuance of the Bonds and the Notes. The time for appeal of such Order has expired prior to the date hereof. Such Order remains in full force and effect.

7. RATES: The rates for the System, adopted by the Issuer on November 19, 2013, are currently in effect. The time for appeal of such rates has expired.

8. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "City of Nitro." The Issuer is a municipal corporation in Kanawha and Putnam County and is presently existing under the laws of, and a political subdivision of, the State of West Virginia. The governing body of the Issuer is its Council, consisting of a Mayor, Recorder, Treasurer and seven (7) councilmembers, all duly elected or appointed, as applicable, qualified and acting members, whose names and dates of commencement and termination of their current terms are as follows:



<u>Name</u>	<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Dave Casebolt, Mayor	7/01/12	6/30/16
Rita Cox, Recorder	7/01/12	6/30/16
John Young, Treasurer	Appointed	
Brenda Tyler, Council Member	7/01/12	6/30/16
Bill Javins, Council Member	7/01/12	6/30/16
Al Walls, Council Member 1	7/01/12	6/30/16
Bill Racer, Council Member	7/01/12	6/30/16
Laurie Elkins, Council Member	7/01/12	6/30/16
Andy Shamblin, Council Member	7/01/12	6/30/16
John Montgomery, Council Member	2/19/13	6/30/16

The duly elected or appointed members of the Utility Board for 2015 are as follows:

Dave Casebolt	-	Chairman
Rich Hively	-	Board Member
Kim Painter	-	Board Member
Harry Miller	-	Board Member
Steve Boggs, P.E.	-	Board Member
Danny Lewis	-	General Manager

The duly appointed and acting attorney for the Issuer is Johnnie Brown. The duly appointed and acting special attorney for the Utility Board and special PSC counsel is Jackson Kelly PLLC, of Charleston.

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

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

11. INSURANCE: The Issuer will maintain or, as appropriate, will require all contractors to maintain worker's compensation, public liability insurance, 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 Bond Purchase Agreement. All insurance for the System required by the Ordinance and the Bond Purchase Agreement are in full force and effect.

12. A. BOND PURCHASE AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the Bond Purchase Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Bond Purchase Agreement does not contain any untrue statements of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the Bond Purchase 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 Bond Purchase Agreement.

B. NOTE PURCHASE AGREEMENT: As of the date hereof in connection with Section 6 (c)(vi) of the Note Purchase Agreement, the undersigned hereby certify that, (i) the Issuer has duly performed all of the obligations to be performed at or prior to the Closing and that each of the representations and warranties contained in the Note Purchase Agreement are true, (ii) the Issuer has authorized, by all necessary action, the execution, delivery, receipt and due performance of the Series 2015 Notes, the Undertaking, the Ordinance, the Indenture and any and all such other agreements and documents as may be required to be executed, delivered and received by the Issuer in order to carry out, give effect to and consummate the transactions contemplated in the Note Purchase Agreement and by the Official Statement, (iii) to our knowledge no litigation is pending, or to our knowledge threatened, to restrain or enjoin the collection of the Surplus Revenues, the pledge of the Surplus Revenues to the Series 2015 Notes, the issuance or sale of the Series 2015 Notes, the issuance and sale of the CWSRF Bonds or in any way affecting any authority for or the validity of the Series 2015 Notes or the Ordinance, (iv) to the best of our knowledge following appropriate inquiry, the execution, delivery, receipt and due performance of the Series 2015 Notes, the Undertaking, the Ordinance and the other agreements contemplated in the Note Purchase Agreement and by the Official Statement under the circumstances contemplated thereby and the Issuer's compliance with the provisions thereof will not conflict with or constitute on the Issuer's part a breach of or a default under any existing law, court or administrative regulation, decree or order or any agreement, indenture, mortgage, lease or other instrument to which the Issuer is subject or by which the Issuer is or may be bound and (v) we are not aware of any material non-compliance with the covenants in all outstanding ordinances which authorized bonds secured by any Revenues of the System.

13. SPECIMEN BOND AND NOTE: Attached hereto as Exhibit A are specimens of the Bonds and the Notes which, except as to execution and authentication, are identical in all respects with the Bonds and the Notes this day delivered to the Authority and DTC, respectively, and being substantially in the form prescribed in the Ordinance.

14. CLOSING PAYMENT: On the date hereof, the Issuer delivered the Series 2015 A Bonds in the principal amount of \$679,519 to the Authority. On the date hereof, the Issuer delivered the Series 2015 Notes in the principal amount of \$6,735,000 to DTC on behalf of the Original Purchaser pursuant to the Note Purchase Agreement.

15. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond and Note Ordinance, an abstract thereof, determined by the Council 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 Charleston Gazette-Mail, a newspaper published and of general circulation in the City of Nitro, together with a notice to all persons concerned, stating that the Ordinance had been adopted and that the City contemplated the issuance of the Bonds and Notes described in such Ordinance, stating that any person interested may appear before the Council at the public hearing held at a public meeting of the Council on the day of November 3, 2015, at 7:00 p.m., at Council Chambers, City Hall, Nitro, West Virginia, and present protests, and stating that a certified copy of the Ordinance was on file at the office of the Recorder of the City for review by interested parties during the office hours of the City. At such hearing all objections and suggestions were heard by the Council and the Ordinance became finally adopted as of the date of such public hearing, and effective as of November 17, 2015, and remains in full force and effect.

16. CONFLICTS OF INTEREST: No member, officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or the sale of any land, materials, supplies or services to the Issuer, or to any contractor supplying the Issuer, relating to the Bonds or the Notes, 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. 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 issuance of the Bonds and Notes.

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

19. OFFICIAL STATEMENT CERTIFICATION: At and since the date of the Official Statement nothing has come to the attention of the undersigned which would lead any such signer to believe that the Official Statement contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

20. IRS INFORMATION RETURN: On the date hereof, the undersigned May did officially sign a properly completed IRS Form 8038-G and will cause such executed Form 8038-G to be filed in a timely manner with the Internal Revenue Service Center, Ogden, Utah, with respect to the Series 2015 E Bonds.

21. CERTIFICATION RESPONSIVE TO SECTION 6(c)(x) OF THE NOTE PURCHASE AGREEMENT: The Issuer is obligated by the Continuing Disclosure Agreement. The Issuer is not a party under any prior written continuing disclosure agreements entered into pursuant to the provisions of Rule 15c2-12(b)(5).

22. 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 Nitro as of the date first written above.

[SEAL]

Signature

Official Title

Dave Corbett

Mayor

Rita Cox

Recorder

EXHIBIT A

See Specimen Bond and Note (Tab No. 12).

CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A  
(WEST VIRGINIA CWSRF PROGRAM)  
AND  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

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

The undersigned duly elected Recorder of the City of Nitro (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 Nitro Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program) (the "Bonds") and the City of Nitro Sewerage System Bond Anticipation Notes, Series 2015 (the "Notes") 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 City 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. Rules of Procedure of Council.
4. Infrastructure Council Approval Letter.
5. Bond Purchase Agreement.
6. Note Purchase Agreement.
7. Sewer Rate Ordinance.
8. Bond and Note Ordinance.
9. Bonds Supplemental Resolution.
10. Notes Supplemental Parameters Resolution.
11. Minutes of Council Meetings regarding All Readings and Public Hearing of the Bond and Note Ordinance and Adoption of the Supplemental Resolutions.

12. Affidavit of Publication of the Notice of Public Hearing and Abstract of Bond and Note Ordinance.
13. WDA Consent to Issuance of Parity Bonds and Subordinate Notes.
14. NPDES Permit.
15. Evidence of Insurance.

[The remainder of this page intentionally left blank.]



WITNESS my signature and the official seal of the City of Nitro on this 3<sup>rd</sup> day of December, 2015.

  
Recorder

[SEAL]

CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A  
(WEST VIRGINIA CWSRF PROGRAM)

3.3(a)

RECEIPT FOR BONDS

On this 3<sup>rd</sup> day of December, 2015, 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 date hereof, in Charleston, West Virginia, the Authority received from the City of Nitro (the "Issuer"), the Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program), dated December 3, 2015, issued in the principal amount of \$679,519, numbered AR-1, in the form of one bond, fully registered to the Authority (the "Bonds").

2. At the time of such receipt of the Bond, it 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 thereon.

WITNESS my signature as of the date first written above.

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

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

CITY OF NITRO, WEST VIRGINIA  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

3.5

RECEIPT FOR NOTES

On this 3<sup>rd</sup> day of December, 2015, the undersigned authorized representative of Crews & Associates, Inc. (the "Original Purchaser"), hereby certifies as follows:

1. On the date hereof through DTC, the Original Purchaser received the original issue of \$6,735,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes, Series 2015 (the "Notes") from the City of Nitro, West Virginia (the "Issuer"). The Notes, as so received on original issuance, are in various denominations, are all dated December 3, 2015, are numbered from NR-1, upward in order of maturity to NR-3, and are registered in the name of "CEDE & CO."

2. At the time of such receipt of the Notes, 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 thereon.

WITNESS my signature as of the date first written above.

CREWS & ASSOCIATES, INC.



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

CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A  
(WEST VIRGINIA CWSRF PROGRAM)

RECEIPT FOR BOND PROCEEDS

On this 3<sup>rd</sup> day of December, 2015, the undersigned Mayor of the City of Nitro (the "Issuer"), for and on behalf of the Issuer, hereby certifies that the Issuer has received on the date hereof from the West Virginia Water Development Authority (the "WDA"), the sum of \$679,519, being the entire principal amount of the Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program), dated the date hereof (the "Bonds").

WITNESS my signature as of the date first written above.

CITY OF NITRO

  
\_\_\_\_\_  
Mayor

CITY OF NITRO  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

RECEIPT FOR NOTE PROCEEDS

On this 3<sup>rd</sup> day of December, 2015, the undersigned Mayor of the City of Nitro (the "Issuer"), for and on behalf of the Issuer, hereby certifies that the Issuer has received and hereby acknowledges receipt on the date hereof from the Underwriter, as the Original Purchaser of the Notes, of the proceeds of the Series 2015 Notes, as follows:

Par Amount of Series 2015 Notes	\$6,735,000
Plus/Minus: Net Reoffering Premium/Discount	\$0
Less: Underwriter's Discount	(\$67,350)
Total	\$6,667,650

Payment for the Series 2015 Notes was made to the Huntington National Bank on behalf of the Issuer in immediately available funds (federal funds wire) in the amount of \$6,735,000.

WITNESS my signature as of the date first written above.

CITY OF NITRO

  
\_\_\_\_\_  
Mayor

CITY OF NITRO  
SEWER REVENUE BONDS, SERIES 2015 A  
(WEST VIRGINIA CWSRF PROGRAM)  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

REQUEST AND AUTHORIZATION TO  
AUTHENTICATE, REGISTER AND DELIVER THE BONDS AND NOTES

The Huntington National Bank  
Cincinnati, Ohio

Ladies and Gentlemen:

We herewith hand to you, duly executed, the (i) \$679,519 Sewer Revenue Bonds, Series 2015 A (West Virginia CWSRF Program), in the form of one bond, numbered AR-1, dated December 3, 2015 (the "Bonds"); and (ii) \$6,735,000 Sewerage System Bond Anticipation Notes, Series 2015, in the form of three (3) notes, numbered NR-1 through NR-3, dated December 3, 2015 (the "Notes"), of City of Nitro (the "Issuer"), authorized to be issued under and pursuant to an Ordinance duly passed on October 20, 2015, effective November 17, 2015 and Supplemental Resolutions duly adopted by the Issuer on November 17, 2015.

You are hereby requested and authorized to authenticate, register and deliver the Bonds on behalf of the Issuer to the West Virginia Water Development Authority (the "Authority").

You are hereby requested and authorized, to authenticate, register in the name of CEDE & CO., as registered owner and nominee of The Depository Trust Company, New York, New York ("DTC") and deliver the Notes to DTC, for the account of Crews & Associates, Inc. as the Original Purchaser thereof.

WITNESS our signatures on this 3<sup>rd</sup> day of December, 2015.

CITY OF NITRO

  
\_\_\_\_\_  
Mayor

(SEAL)

Attest:  
  
\_\_\_\_\_  
Recorder

CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A  
(WEST VIRGINIA CWSRF PROGRAM)

3.9

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 3<sup>rd</sup> day of December, 2015, by and between the CITY OF NITRO, a municipal corporation (the "Issuer"), and THE HUNTINGTON NATIONAL BANK, Cincinnati, Ohio, (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$679,519 Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program), in the form of one bond, numbered AR-1, in fully registered form (the "Bonds"), pursuant to a Bond and Note Ordinance duly passed by the Issuer on October 20, 2015, effective November 17, 2015, and a Supplemental Resolution duly adopted November 17, 2015 (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 the 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:

City of Nitro  
P.O. Box 607  
Nitro, WV 25143  
Attention: Mayor

REGISTRAR:

The Huntington National Bank  
3805 Edwards Road, Suite 350  
CN03  
Cincinnati, OH 45209  
Attn: Corporate Trust

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, register 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.

CITY OF NITRO

  
Mayor

THE HUNTINGTON NATIONAL BANK

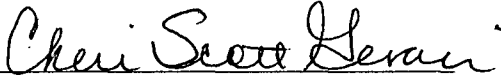
  
Authorized Officer

EXHIBIT A

See Bond Ordinance (Tab No. 10)  
See Supplemental Resolution (Tab No. 11)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 3<sup>rd</sup> day of December, 2015, by and between the CITY OF NITRO, a municipal corporation (the "Issuer"), and THE HUNTINGTON NATIONAL BANK, Cincinnati, Ohio (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$6,735,000 Sewerage System Bond Anticipation Notes, Series 2015, in the form of three (3) notes, numbered NR-1 through NR-3, in fully registered form (the "Notes"), pursuant to a Bond and Note Ordinance duly passed by the Issuer on October 20, 2015, effective November 17, 2015, and a Supplemental Parameters Resolution duly adopted November 17, 2015 (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 Notes, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver Notes 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 Notes 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:

City of Nitro  
P.O. Box 607  
Nitro, WV 25143  
Attention: Mayor

REGISTRAR:

The Huntington National Bank  
525 Vine Street, 14<sup>th</sup> Floor  
Cincinnati, OH 45202  
Attn: Corporate Trust

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, register and deliver the Notes 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.

CITY OF NITRO

  
Mayor

THE HUNTINGTON NATIONAL BANK

  
Authorized Officer

EXHIBIT A

See Bond Ordinance (Tab No. 10)  
See Supplemental Parameters Resolution (Tab No. 11)

CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A  
(WEST VIRGINIA CWSRF PROGRAM)


3.10

CERTIFICATE OF REGISTRATION

THE HUNTINGTON NATIONAL BANK, Cincinnati, Ohio, as Registrar (the "Registrar"), hereby certifies that on the date hereof, (i) the single, fully registered Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program), of the City of Nitro (the "Issuer"), dated December 3, 2015, in the principal amount of \$679,519, and numbered AR-1; were registered as to principal and interest 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 3<sup>rd</sup> day of December, 2015.

THE HUNTINGTON NATIONAL BANK, as Registrar

  
\_\_\_\_\_  
Authorized Officer

CITY OF NITRO  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

3.10

CERTIFICATE OF REGISTRATION

THE HUNTINGTON NATIONAL BANK, Cincinnati, Ohio, as Registrar (the "Registrar"), hereby certifies that on the date hereof, three (3), fully registered Sewerage System Bond Anticipation Notes, Series 2015, of the Issuer, dated December 3, 2015, in the principal amount of \$6,735,000, and numbered NR-1 through NR-3; were registered as to principal in the name of "CEDE & CO." 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 3<sup>rd</sup> day of December, 2015.

THE HUNTINGTON NATIONAL BANK, as Registrar



\_\_\_\_\_  
Authorized Officer



TAX AND NON-ARBITRAGE CERTIFICATE  
of  
CITY OF NITRO, WEST VIRGINIA, as Issuer

Dated December 3, 2015

City of Nitro  
Sewer Revenue Bond Anticipation Notes,  
2015 Series

TAX AND NON-ARBITRAGE CERTIFICATE

TABLE OF CONTENTS

PREAMBLES

ARTICLE I  
DEFINITIONS AND INTERPRETATION

Section 1.1	Definitions.....	2
Section 1.2	Interpretation.....	8
Section 1.3	Reliance on Documents .....	9

ARTICLE II  
REPRESENTATIONS OF THE ISSUER AND USE OF PROCEEDS

Section 2.1	Representations of the Issuer - Purpose of the Notes .....	9
Section 2.2	Sources and Uses .....	10
Section 2.3	Use of Note Proceeds.....	11
Section 2.4	Funds and Accounts.....	12
Section 2.5	Projects.....	12

ARTICLE III  
ARBITRAGE

Section 3.1	Arbitrage Representations.....	12
Section 3.2	Arbitrage Compliance.....	15
Section 3.3	Terms of the Notes and Calculation of Yield .....	15

ARTICLE IV  
ARBITRAGE REBATE

Section 4.1	Rebate Fund; Calculation of Rebate Amount .....	15
Section 4.2	Payment to United States of America.....	16
Section 4.3	Recordkeeping .....	17
Section 4.4	Rebate Analyst.....	17

ARTICLE V  
MISCELLANEOUS

Section 5.1	Bank Qualified.....	17
Section 5.2	Costs of Issuance.....	17
Section 5.3	IRS Form 8038-G .....	18
Section 5.4	Governmental Use .....	18
Section 5.5	No Over Issuance.....	18
Section 5.6	No Private Use .....	18

Section 5.7	No Federal Guaranty .....	18
Section 5.8	Rebate .....	18
Section 5.9	Not Artifice or Device .....	18
Section 5.10	Replacement Proceeds .....	18
Section 5.11	No Prohibited Pledge Funds .....	18
Section 5.12	No Prohibited Transaction .....	19
Section 5.13	No Combined Issue.....	19
Section 5.14	No Abusive Transaction .....	19
Section 5.15	No Hedge Bonds .....	19
Section 5.16	Fixed Yield.....	19
Section 5.17	Service Contract.....	20
Section 5.18	Post-Issuance Compliance .....	21
Section 5.19	Continued Compliance.....	21
Section 5.20	Reliance.....	21

ARTICLE VI  
COVENANTS AND AMENDMENTS

Section 6.1	Compliance with Code.....	22
Section 6.2	Amendment.....	22

SIGNATURES.....	23
-----------------	----

SCHEDULE A – INFORMATION FOR FORM 8038-G PURPOSES.....	A-1
--	-----

EXHIBIT A – UNDERWRITER’S CERTIFICATE .....	Exhibit A-1
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EXHIBIT B – IRS FORM 8038-G .....	Exhibit B-1
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## TAX AND NON-ARBITRAGE CERTIFICATE

### WITNESSETH THAT:

WHEREAS, the City of Nitro (the “Issuer”) is a public corporation and government instrumentality exercising public powers of the state of West Virginia pursuant to Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the “Act”);

WHEREAS, pursuant to and in compliance with Section 103 and other applicable provisions of the Internal Revenue Code of 1986 and the Treasury Regulations promulgated with respect thereto, as amended (collectively, the “Code”), interest on debt obligations of State or local government units is not includable in gross income for federal income tax purposes;

WHEREAS, debt obligations issued by or on behalf of any State or local governmental unit by constituted authorities empowered to issue such obligations are debt obligations of such State or local governmental unit;

WHEREAS, the Issuer has determined to issue its Sewer Revenue Bond Anticipation Notes, 2015 Series (the “Notes”) to provide moneys which will be used to temporarily finance a portion of the costs of the acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage system of the City of Nitro (the “Project”) and to pay certain costs of issuance and related costs;

WHEREAS, the Issuer has determined that the issuance, sale and delivery of the Notes are for a governmental purpose of the Issuer and the certain extensions, additions, betterments and improvements to the existing public sewerage system are desirable for the city;

WHEREAS, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Notes Trust Indenture dated as of December 2, 2015, effective December 3, 2015 (the “Indenture”), by and between the Issuer and Huntington National Bank, as trustee thereunder (the “Trustee”);

WHEREAS, the Notes are intended to be issued as obligations of the Issuer upon which the interest is excludable from the gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Code;

WHEREAS, the Code prescribes restrictions on the Notes, the activities of the Issuer and the application and expenditure of Note proceeds and earnings thereon in order that interest on the Notes not be includable in gross income of the owners thereof for federal income tax purposes, and compliance with the provisions and procedures set forth in this Tax and Non-Arbitrage Certificate (the “Tax Certificate”) is required in order to ensure that the requirements of the Code are and will continue to be met;

WHEREAS, Treasury Regulation § 1.148-2 of the Code requires that the an officer of the Issuer responsible for issuing the Notes much certify in good faith as to the Issuer’s expectations as of the Date of Issue, stating the facts and estimates that form the basis for the Issuer’s

expectations, relative to whether or not the Notes issued are reasonably expected to be arbitrage bonds pursuant to the Code;

WHEREAS, this Tax Certificate sets forth such restrictions on the Notes, the activities of the Issuer, the application and expenditure of Note proceeds and earnings thereon and the reasonable expectations of the Issuer with respect thereto; and

WHEREAS, in order to ensure that interest on the Notes will not be includable in gross income of the owners thereof for federal income tax purposes, the requirements of the Code must be met unless the Issuer are notified in writing to the contrary by Bond Counsel;

NOW THEREFORE, the undersigned, being officials of the Issuer duly charged with the responsibility for the issuance of the Notes and application of the proceeds thereof, hereby certify as follows, jointly unless otherwise stated.

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

Section 1.1. Definitions. For the purpose of this Tax Certificate, the following words and terms shall have the respective meanings set forth as follows, and any capitalized words or terms used but not defined herein shall have the meanings set forth in the respective Indenture and the respective Lease:

“Bond Counsel” means any law firm or firms with expertise in public finance selected by the Issuer and acceptable to the Trustee with respect to the issuance of or matters relating to the exclusion from federal income taxation of interest on the Notes.

“Bond Year” means the period commencing December 3, 2015, and ending on December 2, 2016, and each one-year period thereafter (unless changed by written agreement of the Issuer and the Trustee).

“Bond Yield” shall mean the yield of the Notes, calculated in accordance with the provisions of Treasury Regulation § 1.148-4 of the Regulations.

“City” means the City of Nitro, West Virginia.

“Closing Date” or “Date of Issue” means December 3, 2015, the date of this Tax Certificate, which is the date of initial delivery of the Notes and receipt of payment therefor.

“Computation Date” means each date on which the Rebate Amount for each issue of Notes is computed under Treasury Regulation § 1.148-3(e) of the Code.

“Computation Date Credit” means, for the Notes, \$1,000 for each Bond Year during which there are Proceeds subject to rebate, or such other amount as may then be permitted by the

Regulations. Only one Computation Date Credit for each Computation Date is permitted for each issue of the Notes.

“Costs of Issuance” means all costs incurred in connection with the issuance of the Notes within the meaning of Section 147(g) of the Code.

“Discharged” means with respect to any Note, the date on which all amounts due with respect to such Note are actually and unconditionally due if cash is available at the place of payment and no interest accrues with respect to the Note after such date.

“Fair Market Value” means

(a) In general. The fair market value of an investment is the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction. Fair market value generally is determined on the date on which a contract to purchase or sell the nonpurpose investment becomes binding (i.e., the trade date rather than the settlement date). Except as otherwise provided in this paragraph, an investment that is not of a type traded on an established securities market, within the meaning of Section 1273, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

“Indenture” means the Notes Trust Indenture dated as of December 2, 2015, and effective December 3, 2015, by and between the Issuer and the Trustee, pursuant to which the Notes were issued.

“Final Computation Date” means the date on which the last Note of such issue is Discharged.

“Fiscal Year” means the fiscal year of the State, which commences on July 1 of each year and ends on June 30 of the subsequent year.

“Future Value” means the future value of a payment or receipt at the end of any period, determined using the economic accrual method, and equals the value of that payment or receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the Yield on the issue of Notes, using the same compounding interval and financial conventions used to compute that Yield as provided under Treasury Regulation § 1.148-3(c) of the Code.

“Governmental Unit” means a state, a political subdivision or instrumentality of the foregoing as defined for purposes of Section 141(b)(6) of the Code by Treasury Regulations §§ 1.103-1(a) and 1.141(b).

“Gross Proceeds” means Proceeds and Replacement Proceeds of the Notes within the meaning of the Regulations pursuant to Treasury Regulation § 1.148-1 of the Code.

“Installment Computation Date” means, for the Notes, the last day of the fifth Bond Year and each succeeding fifth Bond Year, until and excluding the Final Computation Date.

“Investment” means any security, obligation, annuity contract, or investment type property as defined in Section 148(b) of the Code.

“Investment Proceeds” means any amounts actually or constructively received from investing Proceeds of an issue of debt obligations pursuant to Treasury Regulation § 1.148-1 of the Code.

“IRS” means the Internal Revenue Service.

“Issue Price” means the par amount for the Notes and is \$6,735,000 (par amount of \$6,735,000 with no original issue discount and no original issue premium);

“Minor Portion” means an amount not exceeding \$100,000.

“Net Sale Proceeds” means Sale Proceeds less the amount of those proceeds invested in a reasonably required reserve or replacement fund under Section 148(d) of the Code and as part of a minor portion under Section 148(e) of the Code.

“Nonpurpose Investment” means any Investment that is not acquired to carry out the governmental purpose of an issue pursuant to Treasury Regulation § 1.148-1 of the Code.

“Notes” means the Issuer’s \$6,735,000 aggregate principal amount of Sewer Revenue Bond Anticipation Notes, Series 2015, dated December 3, 2015.

“Payment” means a payment as defined in Treasury Regulation § 1.148-3(d) of the Code for purposes of computing the rebate amount, and a payment as defined in Treasury Regulation § 1.148-5(b) of the Code for purposes of computing the yield on an investment.

“Present Value” means the amount determined by using the following formula:

$$PV = \frac{FV}{(I+i)^n}$$

where (i) equals the discount rate divided by the number of compounding intervals in a year and n equals the sum of (i) the number of whole compounding intervals for the period ending on the date as of which the Future Value is determined and (ii) a fraction the numerator of which is the length of any short compounding interval during such period and the denominator of which is the length of a whole compounding interval.

“Present Value of an Investment” means the value of an investment computed under the economic accrual method; using the same compounding interval and financial conventions used to compute the yield on the applicable issue of Notes. On any valuation date, the Present Value of an Investment is equal to the Present Value of all unconditionally payable receipts to be

received from the payments to be paid for the investment after that date, using the Yield on the Investment as the discount rate.

“Private Person” means any person or entity other than a Governmental Unit or a Qualifying Section 501(c)(3) Organization.

“Proceeds” means, pursuant to Treasury Regulation § 1.148-1 of the Code, Sale Proceeds, Investment Proceeds, and Transferred Proceeds of an issue of debt obligations. Proceeds do not include amounts that are actually or constructively received with respect to an investment that is acquired for the governmental purpose of an issue that are properly allocable to the immaterially higher yield under Treasury Regulation § 1.148-2(d) of the Code or Section 143(g) of the Code or to qualified administrative cost recoverable under Treasury Regulation § 1.148-5(e) of the Code.

“Prohibited Payment Transaction” means either (i) any transaction to reduce the yield on the investment of Gross Proceeds of an issue of Notes in such a manner that the amount to be rebated to the federal government pursuant to Article IV hereof is less than it would have been had the transaction been at arm’s length and had the yield on the issue not been relevant to either party or (ii) any transaction described in the Regulations as giving rise to imputed receipts as defined in Treasury Regulation § 1.148-3 of the Code.

“Purpose Investment” means any investment that is acquired with the Gross Proceeds of an issue of obligations to carry out the governmental purpose for which such issue was issued pursuant to Treasury Regulation § 1.148-1 of the Code.

“Qualified Guarantee” means a qualified guarantee as defined in Section 1.148-4(f) of the Regulations pursuant to Treasury Regulation § 1.148-1 of the Code.

“Qualified Guarantee Payment” means a payment made to secure a Qualified Guarantee. For this purpose:

(a) Reasonable Payment. A payment is a Qualified Guarantee Payment only if it does not exceed a reasonable charge for the transfer of credit risk, the determination of which shall be made by taking into account payments charged by guarantors in comparable transactions, including transactions in which the guarantor has no involvement other than as a guarantor. Notwithstanding the preceding sentence, this requirement will not be considered met unless the Present Value of the payments made to secure a Qualified Guarantee for the Notes (using the Yield on the Notes to be secured (with regard to payments for the guarantee) as the discount rate) is less than the Present Value of the interest to be saved (using the same discount rate) as a result of the guarantee.

(b) Disallowance Due to Non-Guarantee Element. No payment shall be considered a Qualified Guarantee Payment if any portion thereof is made in respect to a cost, risk or other element that is not customarily borne by guarantors of debt, the interest on which is exempt from federal income taxation, or if the guarantor to which such a payment is made provides non-guarantee services, the fees for which are not separately stated and separately paid.



(c) Allocation of Payments. In the calculation of Yield, Qualified Guarantee Payments shall be taken into account on the basis of level payments which are allocated to the Notes to which each level payment properly relates.

(i) Level Payments. A Qualified Guarantee Payment is a level payment if: the payment is one of a series of payments with respect to the Notes; each payment in the series is the same percentage of the sum of the outstanding principal amount of the Notes and not more than one year's accrued interest (determined as of the date on which the payment is calculated); each payment of the series is due no earlier than one year before and no later than one year after the date on which the payment is calculated; the series of payments are due at periodic intervals (properly adjusted to take into account any short interval); and at least one payment in the series is due in each Bond Year for which the guarantee of the Notes is in effect. Solely for purposes of the preceding sentence, the first Bond Year shall be treated as beginning on the first day that a guarantee is in effect; the last Bond Year shall be treated as ending on the last day on which the guarantee is in effect (without regard to any retirement of the Notes before their final maturity date); and any Bond Year that is less than twelve (12) full months shall be treated as a short Bond Year.

(ii) Non-Level Payments. Qualified Guarantee Payments which are not level shall be allocated to the Notes in a manner that reflects the proportionate credit risk for which the guarantor is compensated. The proportionate credit risk for identical Notes, including Notes subject to mandatory early redemption, is the same. The proportionate credit risk with respect to Notes that are not identical shall be determined by reference to the proportionate interest reduction resulting from the guarantee (determined on a Present Value basis and with adjustments, as necessary, to take into account any level payments). In the case of Notes that are not readily remarketable without a guarantee and for which the proportionate interest reduction cannot reasonably be estimated, the proportionate credit risk shall be determined by use of a reasonable method that properly reflects such risk.

“Rebate Amount” means 100% of the amount owed to the United States under Section 148(f)(2) of the Code, as further described in Treasury Regulation § 1.148-3 of the Code.

“Rebate Analyst” means the firm of certified public accountants, or other specialist in the calculation of arbitrage rebate chosen as specified herein to determine the Rebate Amount, if any.

“Rebate Payment Date” means the date following a Computation Date on which the Rebate Amount is mailed or otherwise filed with the IRS. The Rebate Payment Date may not be a date which is more than 60 days after a Computation Date.

“Rebate Yield” means the yield on the Notes for purposes of determining the Rebate Amount, computed as described in Article III hereof.

“Receipt” means a receipt as defined in Treasury Regulation § 1.148-3(d) of the Code for purposes of computing the Rebate Amount, and a receipt as defined in Treasury Regulation § 1.148-5(b) of the Code for purposes of computing Yield on an Investment.

“Regulation” or “Regulations” means the temporary, proposed or final Income Tax Regulations promulgated by the Department of the Treasury that are applicable to the Notes.

“Related Person” means any person related to any beneficiary of such Notes within the meaning of Section 144(a)(3) of the Code.

“Replacement Proceeds” means amounts that are treated as replacement proceeds of an issue of debt obligations under Treasury Regulation § 1.148-1(c) of the Code. Pursuant to Treasury Regulation § 1.148(c), amounts are Replacement Proceeds of an issue if the amounts have a sufficiently direct nexus to the governmental purpose of the issue to conclude that the amounts would have been used for that governmental purpose if the proceeds of the issue were not used or to be used for that governmental purpose. Replacement Proceeds include, but are not limited to, sinking funds or pledged funds to the extent that those funds are held by or derived from a substantial beneficiary of the issue (which, for this purpose includes the issuer and any related party to the issuer).

“Sale Proceeds” means amounts actually or constructively received from the sale of an issue of debt obligations (including amounts used to pay underwriter’s discount and compensation and accrued interest other than pre-issuance accrued interest) as defined in Treasury Regulation § 1.148-1(b) of the Code.

“SLG” means a time deposit security issued by the United States Treasury pursuant to the Time Deposit State and Local Government Series Program described in 31 C.R.F. part 344.

“State” means the State of West Virginia.

“Substantial User” means any person who shall be a substantial user of a facility, as defined in Treasury Regulation § 1.103-11(b) of the Code.

“Tax-Exempt Bond” means any tax-exempt debt obligations within the meaning of Section 103 of the Code and Section 1.150-1 of the Regulations that is not investment property within the meaning of Section 148(b)(3) of the Code.

“Tax Certificate” means this Tax and Non-Arbitrage Certificate of the Issuer, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof.

“Treasury” means the United States Department of Treasury.

“Universal Cap” shall mean the maximum value of Nonpurpose Investments which may be allocated to the Notes under Treasury Regulation § 1.148-6 of the Code and is determined by reference to the Value of all outstanding Notes of the issue. For purposes of this determination Nonpurpose Investments include cash, Tax-Exempt Notes (i.e., any tax-exempt bond that is not investment property under Section 148(b)(3) of the Code), qualified mortgage loans, and qualified student loans.

“Valuation Date” means the date on which the value of the Universal Cap and the Nonpurpose Investments allocable the Notes thereunder must be determined under Treasury Regulation § 1.148-6 of the Code. In general, beginning with the first Bond Year beginning after second year anniversary of the Date of Issue, the first day of each Bond Year constitutes a Valuation Date. In addition, the Regulations provide with respect to a refunded issue each date on which proceeds of the refunded issue would become transferred proceeds of the refunding issue, e.g., each date on which principal of the refunded issue is paid with proceeds of the refunding bonds, constitutes a Valuation Date.

“Value of a Bond” means the value of a bond or tax-exempt obligation, such as the Notes, determined under Treasury Regulation § 1.148-4(e) of the Code. Under said regulation, value generally means:

(a) In the case of a plain par bond (within the meaning of Treasury Regulation § 1.148-1(b) of the Code), its outstanding stated principal amount, plus accrued unpaid interest or in the case of a plain par bond actually redeemed, or that is treated as redeemed, its stated redemption price on the redemption date plus accrued unpaid interest; and

(b) In the case of a debt obligation other than a plain par bond, the value on a date of such an obligation is generally its Present Value on that date, using the yield on the issue of which the obligations are a part as the discount factor. In determining the Present Value of a variable rate debt obligation, the initial interest rate on the debt obligation established by the index or other rate setting mechanism is used to determine the interest payments on that debt obligation.

“Value of an Investment” means the value of an investment determined under Treasury Regulation § 1.148-5(d) of the Code. Under that regulation, value as of any date generally means, for any fixed rate investment (within the meaning of Treasury Regulation § 1.148-1(b) of the Code) or Yield Restricted Investment, Present Value on that date, and for any plain par investment (within the meaning of Treasury Regulation § 1.148-1(b) of the Code), the outstanding stated principal amount, plus accrued unpaid interest, as of that date.

“Yield” or “yield” means the yield computed under Treasury Regulation § 1.148-4 of the Code for the Notes, and the yield computed under Treasury Regulation § 1.148-5 of the Code for an Investment.

“Yield Restricted Investments” means any Investments which either (1) bear a yield that is no greater than the applicable Bond Yield, or (2) are investments in one or more Tax-Exempt Notes.

Section 1.2. Interpretation. In this Tax Certificate:

(A) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Tax Certificate, refer to this Tax Certificate, and the term “hereafter” means after, and the term “heretofore” means before the date of this Tax Certificate.

(B) The preferential tax treatment of the Notes is governed by the Code, which contains terminology often referring to tax-exempt obligations such as the Notes as “bonds” and any reference to bonds within a term defined within Article I is meant to conform to the terminology of the Code and does not reference a separate debt obligation from the Notes.

(C) Unless the context requires otherwise, words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(D) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(E) Any headings preceding the texts of the several Articles and Sections of this Tax Certificate, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Tax Certificate, nor shall they affect its meaning, construction or effect.

(F) All certifications, documents and instructions required to be given or made by any person or party hereunder shall be made in writing.

(G) This Tax Certificate shall be governed by and construed in accordance with the applicable laws of the State and the Code.

(H) If any provision of this Tax Certificate shall be ruled invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect any of the remaining provisions hereof.

Section 1.3. Reliance on Documents. Bond Counsel shall be permitted to rely on the contents of any certification, document or instruction provided pursuant to this Tax Certificate and shall not be responsible or liable in any way for the accuracy of its contents or the failure of the Issuer to ascertain the accuracy thereof or follow any of the provisions therein.

## ARTICLE II

### REPRESENTATIONS OF THE ISSUER AND USE OF PROCEEDS

Section 2.1. Representations of the Issuer - Purpose of the Notes. The Issuer represents that:

(A) This certificate is being executed and delivered pursuant to Section 148 of the Code. We are officers of the Issuer charged with the responsibility of issuing the Notes and application of the proceeds thereof. We are familiar with the facts, circumstances, and estimates herein certified and are duly authorized to execute and deliver this certificate on behalf of the Issuer.

(B) This certificate may be relied upon as the certificate of the Issuer.

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

(D) This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on December 3, 2015, the date on which the Notes are to be physically delivered in exchange for the respective Issue Prices thereof, and to the best of our knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

(E) The Notes were sold and delivered on November 24, 2015, to the Underwriters for \$6,667,650 (par amount of \$6,735,000 less underwriters' discount of \$67,350.00);

(F) The Issuer has covenanted in the Indenture that it will not permit at any time or times any of the proceeds of the applicable Notes or any funds of the Issuer to be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any of the applicable Notes to be "arbitrage bonds" within the meaning of Section 148 of the Code.

(G) The Notes are being delivered simultaneously with the delivery of this Tax Certificate. The Notes are being issued to temporarily finance a portion of the costs of the acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage system of the City of Nitro (the "Project") and to pay certain costs of issuance and related costs.

Section 2.2. Sources and Uses. The par amount of the Notes is \$6,735,000. The sources and uses of proceeds of the Notes are as follows:

Series 2015 Notes

Sources:

Par Amount of Series 2015 Notes	\$6,735,000.00
Total Sources of Fund	\$6,735,000.00

Uses:

Deposit to the Construction Trust Fund	\$6,602,383.00
Payment of Costs of Issuance <sup>1</sup>	\$ 132,617.00
Total Uses of Funds	\$6,735,000.00

(C) The Underwriter has stated, in its certificate, a copy of which is attached hereto as EXHIBIT B – UNDERWRITER’S CERTIFICATE (the “Underwriter’s Certificate”) that, except as specifically described therein, the Notes have been offered, and a substantial amount (at least 10%) of each maturity thereof sold, to purchasers other than bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers, at the initial offering prices not higher than, or yields not lower than, the respective prices and yields shown on Schedule A of the Underwriter’s Certificate.

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<sup>1</sup> Cost of Issuance includes Underwriter’s Discount of \$67,350.00

The reasonably expected economic life of any asset shall be determined as of the later of the date on which the Notes are issued, or the date on which the asset is placed in service (or expected to be placed in service). The weighted average maturity of the Notes is 2.187 years, which does not exceed 120 percent of the weighted average reasonably expected economic lives of the assets financed with proceeds of the Notes.

Section 2.3. Use of Note Proceeds.

(A) Proceeds of the Notes will be used as set forth in Section 2.2.

(B) The Issuer shall cause \$65,267.00 (\$132,617.00 less the Underwriters' discount of \$67,350.00, which is being withheld from the proceeds) from the proceeds of the sale of the Notes to be used to pay Costs of Issuance for the Notes, and in the event such Costs of Issuance are less than \$65,267.00, any remaining funds shall be deposited into the Construction Trust Fund established for the Notes.

(i) All proceeds of the Notes will be spent for the governmental purposes of the issue.

(ii) No device, as described in Section 149(d)(4) of the Code, has been employed in connection with the issuance of the Notes to obtain a material financial advantage (based on arbitrage).

(C) At least 90% of all property financed with proceeds of the Notes will be occupied by a qualified Government Unit and all property financed with proceeds of the Notes will be owned by or on behalf of a qualified Governmental Unit, and at least 90% of the Project financed with the proceeds of the applicable Notes will be operated for public purposes as a governmental activity.

(D) No portion the Project will consist of any airplane, skybox or other luxury box, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(E) No portion of the payments of principal of or interest on the Notes will be made, financed or secured by, directly or indirectly, by payments or property used in any trade or business of any person other than the Issuer or a qualified Governmental Unit. The Issuer will not permit any portion of the payment of the principal or interest on the Notes to be secured, directly or indirectly, by (i) interests in property or (ii) payments in respect of such property, which property is used or to be used in any trade or business of any person other than the Issuer or another qualified Governmental Unit. The Issuer will not permit any portion of the payment of the principal or interest on the Notes to be derived, directly or indirectly by payments (whether or not to the Issuer) with respect to property or borrowed money, used or to be used in any trade or business of any persons other than the Issuer or another qualified Governmental Unit.

(F) At least 90% of the Project financed with proceeds of the applicable Notes will be used only in activities directly related to the Issuer's or the Governmental Units' exempt governmental purpose.

Section 2.4. Funds and Accounts.

(A) Under the Indenture, a Construction Trust Fund and a Costs of Issuance Fund are established. The proceeds of sale of the Notes shall be credited or paid to the Trustee and forthwith transferred and deposited as follows:

- (i) to the Construction Trust Fund: \$6,602,383.00; and
- (ii) to the Costs of Issuance Fund: \$65,267.00.

(B) Interest on the Notes and principal on the Notes will be paid through the Issuer's issuance of its Sewer Revenue Notes, in multiple series. The payment of the principal on the Notes shall be secured forthwith equally and ratably by a first lien on the proceeds of debt obligations separately issued to the West Virginia Department of Environmental Protection Clean Water State Revolving Loan Fund ("CWSRF Bonds"). The payment of the interest on the Notes is secured by the Surplus Revenues of the System.

(C) Other than the fund described above, there are no other funds or accounts of the Issuer which (i) are reasonably expected to be used to pay Debt Service on the Notes or which are pledged as collateral to secure repayment of Debt Service on an issue of Notes and (ii) for which there is a reasonable assurance that amounts therein will be available to pay Debt Service on the applicable Notes

Section 2.5. Projects. (A) The State either has or within six months of the date hereof will incur a substantial binding obligation to a third party to expend at least five percent (5%) of the net sale proceeds of the Notes on such Project.

(D) 85% of the net sale proceeds of the Notes will be allocated to expenditures on such Project by the end of a three-year period from the date hereof.

(E) The completion of such Project and the allocation of the net sale proceeds of the Notes to expenditures for such Project will proceed with due diligence.

ARTICLE III

ARBITRAGE

Section 3.1. Arbitrage Representations. Pursuant to the issuance of the Notes, the Issuer hereby covenants, represents and warrants as follows:

(A) Representations of the Issue Price of the Notes and the Yield on such Notes are based on the certificate executed by the Underwriters of even date herewith. The Issuer is not aware of any facts or circumstances that would cause them to question the accuracy of the representations made by the Underwriters.

(B) No portion of the proceeds of the Notes will be used directly or indirectly to replace funds of the Issuer used directly or indirectly to acquire securities or obligations which may reasonably be expected, on the date hereof, to produce a yield materially higher than the Yield on such Notes.

(C) Other than as described in this Tax Certificate the Notes are not and will not be part of a transaction or series of transactions that attempt to circumvent the provisions of Section 148 of the Code, or any successor thereto, and the regulations promulgated thereunder which (i) enable the Issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage or (ii) increase the burden on the market for tax-exempt obligations in any manner, including, without limitation, by selling obligations that would not otherwise be sold or selling a larger amount of obligations, or issuing them sooner, or allowing them to remain outstanding longer, than would otherwise be necessary to accomplish the governmental purposes of the Notes.

(D) With respect to the issue of the Notes, no other obligations are being issued by the Issuer or any related entity at substantially the same time and sold pursuant to a common plan of funding and which will be paid out of substantially the same source of funds (or which will have substantially the same claim to be paid out of substantially the same source of funds) as such Notes or which will be paid directly or indirectly from proceeds of the sale of such Notes. The payment of the principal on the Notes shall be secured forthwith equally and ratably by a first lien on the proceeds of the CWSRF Bonds (excluding the Series 2015 A CWSRF Bonds"). The payment of the interest on the Series 2015 Notes is secured by the Surplus Revenues of the System.

(E) The Issuer has not been notified of the listing or proposed listing of the Issuer by the Internal Revenue Service as an issuer that may not certify its debt obligations.

(F) The issuance of the Notes will not involve the use of a "device" or an "abusive transaction" within the meaning of Section 149(d)(4) or Treasury Regulation § 1.148-10 of the Code.

(G) In connection with the issue of the Notes, there has not been created or established, and the Issuer does not expect that there will be created or established, any sinking fund, pledged fund or similar fund (other than as specifically identified in this Tax Certificate), including without limitation any arrangement under which money, securities or obligations are pledged directly or indirectly to secure the Notes or any contract securing the Notes or any arrangement providing for compensating or minimum balances to be maintained by the Issuer with any registered owner of the Notes.



(H) (i) On each Valuation Date, the Issuer shall value the Nonpurpose Investments allocable to the Notes thereunder. Nonpurpose Investments cease to be allocated to the Notes to the extent such Nonpurpose Investments have been expended for the governmental purpose of the issue, or to the extent the value thereof exceeds the value permitted to be allocated to the Notes under the Universal Cap. To the extent Nonpurpose Investments cease to be allocated to an issue and the value of the Universal Cap exceeds the value of the remaining Nonpurpose Investments allocated to such issue, other Nonpurpose Investments may become allocated to the issue, provided that such Nonpurpose Investments are not already properly allocated to another issue and provided that such allocation does not cause the value of the Nonpurpose Investments allocated to such Notes to exceed the Universal Cap.

(ii) Notwithstanding anything herein to the contrary, the failure to perform the determination of Nonpurpose Investments allocable to an issue of Notes as of a Valuation Date shall not be considered a violation of this provision if the value of Nonpurpose Investments allocated to such Notes did not exceed the value of the Notes outstanding on such date.

(I) The Issuer hereby covenants that it will make no investment or other use of the proceeds of the Notes that would cause such Notes to be “arbitrage bonds,” as that term is defined in Section 148 of the Code and any rulings and regulations which have been promulgated under the predecessor provisions of the 1954 Code or which may be promulgated under the Code.

(J) The Issuer covenants that they will not enter into any contracts or agreements with the United States or any agency or instrumentality thereof that would cause the representations set forth in the preceding paragraph to be false.

(K) The Issuer will take all further actions necessary to comply with the Code and Regulations.

(L) The Issuer will not enter into any Prohibited Payment Transaction. Prior to directing that any of the Gross Proceeds be invested in certificates of deposit or pursuant to an investment contract, the Issuer will obtain certifications as necessary to provide evidence of compliance with this provision.

(i) The investment of Note proceeds in a certificate of deposit issued by a commercial bank will not be a Prohibited Payment Transaction if the price at which it is purchased or sold is the bona fide bid price quoted by a dealer who maintains an active secondary market in such certificates of deposit. If there is no active secondary market in such certificates of deposit, the purchase or sale of a certificate of deposit will not result in a Prohibited Payment Transaction if the certificate of deposit has a Yield (1) as high or higher than the Yield on comparable obligations traded on an active secondary market, as certified by a dealer who maintains such a market, and (2) as high or higher than the Yield available on comparable obligations offered by the United States Treasury. The certification described in the preceding sentence must be executed by a dealer who maintains an active secondary market in comparable certificates of deposit and must be based on actual trades adjusted to reflect the size

and term of that certificate of deposit and the stability and reputation of the person issuing the certificate of deposit.

(ii) The purchase or sale of Nonpurpose Investments pursuant to an investment contract (e.g., an agreement to deposit gross proceeds with a particular bank, with the deposits to bear interest at an agreed rate) will not be a Prohibited Payment Transaction if (1) at least three bids on the investment contract from persons other than those with an interest in the issue (e.g., underwriters) are received, (2) a certification is provided by the person whose bid is accepted stating that, based on that person's reasonable expectations on the date that the contract is entered into, Nonpurpose Investments will not be purchased pursuant to the investment contract at a price in excess of their Fair Market Value or sold pursuant to the investment contract at a price less than their Fair Market Value, (3) the Yield on the investment contract is at least equal to the Yield offered under the highest bid received from a noninterested party, and (4) the Yield on the investment contract is at least equal to the Yield offered on similar obligations under similar investment contracts (e.g., the Yield on investment contracts entered into by issuers of qualified mortgage bonds).

Section 3.2. Arbitrage Compliance. The Issuer acknowledges that the continued exclusion of interest on the Notes from gross income of the recipients thereof for purposes of federal income taxation depends, in part, upon compliance with the arbitrage limitations imposed by Section 148 of the Code, including the rebate requirement described in Article IV. The Issuer hereby agrees and covenant that they shall not permit at any time or times any of the proceeds of the Notes to be "arbitrage bonds" for purposes of Section 148 of the Code. The Issuer further agrees and covenant that they shall do and perform all acts and things necessary to ensure that the requirements of Section 148 of the Code are met. At the written direction of the Issuer, the Trustee shall make the required transfers and dispositions described in Article IV hereof.

Section 3.3. Terms of the Notes and Calculation of Yield. The date, maturities, prices and denominations, and rates of interest of the Notes are shown in the Indenture dated as of December 2, 2015, and effective December 3, 2015, by and between the Issuer and the Trustee and the Official Statement dated November 24, 2015, relating to the Notes. Based on the Underwriter's Certificate attached hereto as Exhibit B, the initial offering price of the Notes to the public is \$6,735,000, representing a par amount of \$6,735,000 with no original issue premium and no original issue discount. The Issuer believes that such prices are reasonable under customary standards applicable in the established tax- exempt market. The Yield on the Series 2015 Notes, as set forth in the Underwriter's Certificate specified above, is 1.9596054%.

## ARTICLE IV

### ARBITRAGE REBATE

Section 4.1. Rebate Fund; Calculation of Rebate Amount. (a) Section 148(f) of the Code requires the payment to the United States of the excess of the amount earned on the investment of Gross Proceeds in Nonpurpose Investments over the amount that would have been earned on such investments had the amount so invested been invested at a rate equal to the Bond

Yield, together with any income attributable to such excess. Except as provided below, the Construction Trust Fund and all other funds or accounts treated as containing Gross Proceeds are subject to this requirement.

(b) In accordance with the requirements set out in the Code and pursuant to Section 4.01 of the Indenture, the Issuer has created the Rebate Fund to be held by the Trustee, in its capacity as Trustee under the Indenture and used as provided in Section 4.05 of the Indenture. On or before 30 days following each Computation Date, upon the Issuer's written direction, an amount shall be deposited to the Rebate Fund by the Trustee from the source or sources stated in such direction so that the balance held in the Rebate Fund shall equal the aggregate Rebate Amount due as of the Rebate Payment Date following such Computation Date.

(c) To meet the rebate requirement of Section 148(f) of the Code, the Issuer (or the Rebate Analyst), agrees and covenant to take the following actions:

(i) For each investment of amounts held with respect to the Notes in the (A) the Construction Trust Fund, and (B) applicable Rebate Fund, the Trustee, in accordance with the applicable Indenture, shall record the purchase date of such investment, its purchase price, accrued interest due on its purchase date, its face amount, its coupon rate, the frequency of its interest payment, its disposition price, accrued interest due on its disposition date and its disposition date.

(ii) The Bond Yield shall be computed as of each Computation Date.

(iii) The Rebate Amount shall be calculated as of each Computation Date.

(iv) If the Rebate Amount exceeds the amount on deposit in the applicable Rebate Fund, the Issuer shall either (i) direct that amounts be transferred from any surplus available in any other Fund or (ii) immediately pay such amount to the Trustee for deposit into the Rebate Fund.

(v) All calculations of Yield, Future Value, Rebate Amount and present value shall be made through the use of the conventions described in Section 1.148-6 of the Regulations.

Section 4.2. Payment to United States of America. (a) Within 60 days after each Installment Computation Date, the Issuer shall pay to the United States 90% of the Rebate Amount. The Issuer shall pay to the United States, not later than 60 days after the Final Computation Date, 100% of the Rebate Amount. Each payment to the United States pursuant to this Section 4.2 shall be rounded down to the nearest multiple of \$100.00. Any amount that is less than \$100.00 shall be rounded to zero.

(b) Each payment of an installment shall be mailed to the Internal Revenue Service Center, Ogden, Utah 84201. Each payment shall be accompanied by (i) a copy of IRS Form 8038-T, (ii) the CUSIP number for the bond with the latest maturity and (iii) a statement summarizing the determination of the Rebate Amount.

(c) If on the Rebate Payment Date the balance on deposit in the Rebate Fund is in excess of the Rebate Amount attributable to the applicable issue of Notes, such excess may be transferred pursuant to the provisions of the applicable Indenture. The Issuer may direct that any overpayment of rebate may be recovered from any rebate payment previously made to the United States under any procedure that may, after the date of this Tax Certificate, be permitted by the Code or the Regulations.

Section 4.3. Recordkeeping. In connection with the rebate requirement, the Issuer shall maintain the following records:

(a) The Issuer shall record all amounts paid to the United States pursuant to Section 4.2 hereof. The Issuer shall furnish to the Trustee copies of any materials filed with the IRS pertaining thereto.

(b) The Issuer shall retain records of the rebate calculations until six years after the Final Computation Date.

(c) The Issuer shall keep and record the data described in Section 4.1(c)(i) hereof pertaining to the investment of the proceeds of the Notes.

Section 4.4. Rebate Analyst. (a) A Rebate Analyst may be appointed to perform the rebate calculations, as required herein. The Rebate Analyst and each successor Rebate Analyst shall signify its acceptance of the duties imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer under which such Rebate Analyst will agree to discharge its duties pursuant to this Tax Certificate in a manner consistent with prudent industry practice.

(b) The Trustee and the Issuer may rely conclusively upon and shall be full protected from all liability in relying upon the opinions, calculations, determinations, directions and advice of the Rebate Analyst. The charges and fees for such Rebate Analyst shall be paid by the Issuer upon presentation of an invoice for services rendered in connection therewith.

## ARTICLE V

### MISCELLANEOUS

Section 5.1 Bank Qualified. The Issuer has designated the Bonds as “qualified tax-exempt obligations” for purposes of Subsection 265(b) of the Code. The Issuer does not reasonably expect and covenants not to issue, or to have issued on its behalf, more than \$10,000,000 of tax-exempt obligations, including the Notes, during the calendar year 2015.

Section 5.2. Costs of Issuance. The amount designated as “Cost of Issuance” of the Notes consists only of costs which are directly related to and necessary for the issuance of the Notes.

Section 5.3. IRS Form 8038-G. The Issuer shall file Form 8038-G for the Notes in a timely fashion with the Internal Revenue Service Center, Ogden, Utah 84201. The information set forth in SCHEDULE A - INFORMATION FOR PURPOSES OF IRS FORM 8038-G and SCHEDULE B - INFORMATION FOR PURPOSES OF IRS FORM 8038-G , attached hereto, is true and correct, and may be relied upon by Bond Counsel in its preparation of IRS Forms 8038-G.

Section 5.4. Governmental Use. None of the proceeds of the Notes will be used (directly or indirectly) in any trade or business carried on by, or will be used to make or finance loans to, any person who is not a Governmental Unit.

Section 5.5. No Overissuance. The original proceeds of the Notes will not exceed the amount necessary for the purpose of the issue.

Section 5.6. No Private Use. The Issuer shall not permit at any time or times any of the proceeds of the Notes or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Notes from treatment afforded by Section 103(a) of the Code by reason of classification of the Notes as “private activity bonds” within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and the Treasury Regulations promulgated or to be promulgated thereunder.

Section 5.7. No Federal Guaranty. The Notes are not and will not, in whole or part, directly or indirectly, be federally guaranteed within the meaning of Section 149(b) of the Code.

Section 5.8. Rebate. The Issuer will rebate to the United States the amount, if any, required by the Code 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 interest, penalties and other amounts from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take all other actions required of it in order to maintain the exclusion of interest on the Notes from gross income for federal income tax purposes.

Section 5.9. No Artifice or Device. The Issuer has not entered or will enter into any transaction to reduce the Yield on an investment of the Gross Proceeds of the Notes so as to cause the amount to be rebated to the United States Treasury to be less than it would have been had the transaction been at arm’s length and the Yield on such Notes not been relevant to either party to the transaction, and that all investments of Gross Proceeds will be made on an arm’s length, Fair Market Value basis.

Section 5.10. Replacement Proceeds. No portion of the proceeds of the Notes will be used directly or indirectly to replace funds of the Issuer or other related governmental agency that have been used directly or indirectly to acquire securities or obligations which may reasonably be expected, on the date hereof, to produce a yield materially higher than the Yield on the applicable Notes.

Section 5.11. No Prohibited Pledged Funds. In connection with this Notes, there has not been created or established, and the Issuer does not expect that there will be created or

established, any sinking fund, pledged fund or similar fund (other than as specifically identified in this Tax Certificate), including without limitation any arrangement under which money, securities, or obligations are pledged directly or indirectly to secure the Notes or any contract securing such Notes or any arrangement providing for compensating or minimum balances to be maintained by the Issuer or related governmental agencies with any registered owner of such Notes.

Section 5.12. No Prohibited Transaction. The Notes are not and will not be part of a transaction or series of transactions that (i) attempt to circumvent the provisions of Section 148 of the Code, or any successor thereto, and the Regulations promulgated thereunder which enable the Issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage or (ii) increase the burden on the market for tax-exempt obligations in any manner, including, without limitation, by selling obligations that would not otherwise be sold or selling a larger amount of obligations, or issuing them sooner, or allowing them to remain outstanding longer, than would otherwise be necessary.

Section 5.13. No Combined Issue. The Notes are payable solely from the trust estate created under the Indenture. Although the Notes and a series of CWSRF bonds are to be issued around the same time, they will not be paid out of substantially the same source of funds and, accordingly, do not constitute a single issue. Except as described above, no other obligations are being issued by the Issuer or any related entity at substantially the same time and sold pursuant to a common plan of financing and which will be paid out of substantially the same source of funds (or which will have substantially the same claim to be paid out of substantially the same source of funds) as either the Notes or the CWSRF bonds.

Section 5.14. No Abusive Transaction. The issuance of the Notes will not involve the use of a “device” or an “abusive transaction” within the meaning of Section 149(d)(4) of the Code and the Regulations thereunder.

Section 5.15. No Hedge Bonds. Pursuant to Section 149(g)(3)(A)(ii) of the Code, not more than 50% of the proceeds of the Notes shall be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or longer.

Section 5.16. Fixed Yield. The Notes are a fixed yield issue. No interest or other amount payable on any of the Notes (other than in the event of an unanticipated contingency) is determined by reference to (or by reference to an index that reflects) market interest rates or stock or commodity prices after the date of issue.

Section 5.17. Service Contracts. (A) Post-May 15, 1997 Contracts and Modifications. The Issuer should not enter into, materially modify or extend (other than pursuant to a Renewal Option existing on May 15, 1997) a Service Contract with any Service Provider to manage, provide services in, or otherwise use the Project, unless:

(1) Pursuant to IRS Revenue Procedure 93-19, the compensation is reasonable for the services rendered by the Service Provider and the Service Contract does not provide for

any compensation based, in whole or in part, on a share of net profits from the operation of the Project, and

(2) Pursuant to IRS Notice 2014-67, the compensation arrangement during each annual period during the term of the Service Contract complies with the terms this Subsection:

(i) Fixed Fee.

(a) 95% Fixed. At least ninety-five percent (95%) of the consideration for services is based on a Periodic Fixed Fee, which may include an Incentive Award; provided however that the term (including Renewal Options) of such Service Contract does not exceed the lesser of eighty percent (80%) of the expected useful life of the Project or fifteen (15) years;

(b) 80% Fixed. At least eighty percent (80%) of the consideration for services is based on a Periodic Fixed Fee, which may include an Incentive Award; provided, however that the term (including Renewal Options) of such Service Contract does not exceed the lesser of eighty percent (80%) of the expected useful life of the Project or ten (10) years; or

(c) 50% Fixed. At least fifty percent (50%) of the consideration for services is based on a Periodic Fixed Fee; provided, however, that the term (including Renewal Options) of such Service Contract does not exceed five (5) years and the contract includes a Cancellation Right at the end of the third year of the Service Contract;

(ii) Capitation Fee. More than fifty percent (50%) of the consideration for services is based on a Capitation Fee and any remaining consideration is based on a Periodic Fixed Fee; provided, however, that the term (including Renewal Options) of such Service Contract does not exceed five (5) years and the contract includes a Cancellation Right at the end of the third year of the Service Contract;

(iii) Per-Unit Fee. More than fifty percent (50%) of the consideration for services is based on a Per-Unit Fee and any remaining consideration is based on a Periodic Fixed Fee; provided, however, that the term (including Renewal Options) of such Service Contract does not exceed three (3) years, and the contract includes a Cancellation Right at the end of the second year of the Service Contract; or

(iv) Percentage Fee. All the consideration for services is a percentage of fees charged or costs incurred (but not both) or is a combination of a percentage of fees charged or costs incurred and Per-Unit Fees; provided, however, that the term (including Renewal Options) of such Service Contract does not exceed two (2) years and the contract includes a Cancellation Right at the end of the first year of the Service Contract; and provided, further, that such Service Contract is one under which the Service Provider primarily provides services to third parties, or the Service Contract is one that involves a facility during an initial startup period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues and expenses, during which time, the consideration may be based on a percentage of gross revenues, adjusted gross revenues or costs;

(3) Control. Not more than twenty percent (20%) of the voting power of the governing body of the Issuer, in the aggregate, should be vested in the Service Provider or in the Service Provider's directors, officers, shareholders and employees. Additionally, the respective chief executive officers of the Issuer and the Service Provider and of the governing bodies of the Issuer and the Service Provider should not serve on the governing body of the other and the Issuer and the Service Provider should not be members of the same controlled group, as defined in Treas. Reg. § 1.150-1(e) or Related Persons; and

(4) Exception. Any agreements that do not satisfy Subparagraphs (i)(A) – (C) of this Subsection or Rev. Proc. 97-13, 1997-1 C.B. 632, may be entered into provided that the Issuer receives an opinion of Bond Counsel that to do so would not adversely affect the Federal Tax Status of the Obligations; and

(B) Pre-May 16, 1997 Contracts. The Issuer must have ascertained that any Service Contract entered into prior to May 16, 1997 satisfies the provisions of either Rev. Proc. 93-19, 1993-1 C.B. 526 or Subparagraph (A) of this Subsection or the Issuer should have received an opinion of Bond Counsel that the existing Service Contract will not adversely affect the Federal Tax Status of the Obligations.

Section 5.18. Post-Issuance Compliance. The Issuer has been informed that the Internal Revenue Service has recently placed added emphasis on the need for written procedures as to arbitrage matters and post-issuance non-compliance. By means of a resolution adopted by the Issuer on [Date], the Issuer has adopted a Post-Issuance Compliance Policy for Tax-Exempt Bonds. Thus, for purposes of preparation of Form 8038-G, the existence of written procedures should be indicated thereon with respect to the Notes.

Section 5.19. Continued Compliance. The Issuer covenants to comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Notes in order that the interest thereon be and continue to be excludable from gross income for federal income tax purposes.

Section 5.20. Reliance. Under Treasury Regulation § 1.148-2(b) of the Code, an officer of the Issuer must certify the Issuer's expectations as of the issue date. In accordance therewith, the undersigned Mayor of the Issuer hereby in good faith certifies that the representations and covenants set forth in this Tax and Non-Arbitrage Certificate constitute the reasonable expectations of the Issuer as of the Date of Issue. Accordingly, the representations and covenants set forth herein are intended and may be relied upon as the certification described in Treasury Regulation § 1.148-2(b) of the Code and are being delivered as part of the record of proceedings in connection with the issuance of the Notes.



## ARTICLE VI

### COVENANTS AND AMENDMENTS

Section 6.1. Compliance with Code. The Issuer covenants and agrees that they shall at all times do and perform all acts and things necessary and within their reasonable control in order to assure that interest paid on the Notes shall, for purposes of Federal income taxation, be not included in gross income.


The Issuer acknowledges that the covenants and conditions set forth in this Tax Certificate are based upon the Code as it exists on the date hereof and that the Code may be subsequently interpreted or modified by the Federal government in a manner which is inconsistent with the covenants set forth herein. The Issuer agrees that any such subsequent modification or interpretation of the Code will be deemed a requirement that must be met pursuant to the general tax covenant set forth above.

The Issuer shall not be required to comply with any specific requirement of this Tax Certificate to the extent that, in the opinion of Bond Counsel furnished to the Issuer, compliance with such requirement is not necessary to maintain the tax-exempt status of the Notes.

Section 6.2. Amendment. Notwithstanding any other provision hereof, any provision of this Tax Certificate may be added to, deleted or modified at any time at the option of the Issuer if the Issuer has provided to the Trustee an opinion, in form and substance satisfactory to the Trustee, of Bond Counsel that such addition, deletion or modification will not adversely affect the exclusion of interest on the Notes from the gross income of the recipients thereof for purposes of federal income taxation.

IN WITNESS WHEREOF, the Issuer has caused this Tax and Non-Arbitrage Certificate to be executed on their behalf by their respective duly authorized representatives all as of the date first above written.

CITY OF NITRO, WEST VIRGINIA

By   
Its Mayor

SCHEDULE A

INFORMATION FOR FORM 8038-G PURPOSES FOR THE NOTES

Line

2	Issuer's Employee Identification Number	556000223
7	Date of Issue	12/03/2015
9	CUSIP Number	654795BK8
15	Type of Issue	
15	Issue price of the Bonds (excluding accrued interest)	\$6,735,000.00
21(a)	Final Maturity Date	01/01/2019
21(b)	Issue price	\$6,735,000.00
21(c)	Stated redemption price at maturity	\$6,735,000.00
21(d)	Weighted Average Maturity	2.187 Years
21(e)	Yield on Bonds	1.9596054%
22	Proceeds used for Accrued Interest	\$ 0
24	Proceeds used for Bond Issuance Costs	\$132,617.00
25	Proceeds used for Credit Enhancement	\$0
26	Proceeds allocated to Reasonably Required Reserve or Replacement Fund	\$0
27	Proceeds used to currently refund prior issues	\$0
28	Proceeds used to advance refund prior issues	\$0
30	Nonrefunding Proceeds of the Bonds	\$6,602,383.00
31	Remaining weighted average maturity of currently refunded bonds	
32	Remaining weighted average maturity of advance refunded bonds	
34	Date Refunded Bonds were issued	

EXHIBIT A

CERTIFICATE OF UNDERWRITERS

See Certificate of the Underwriter (Tab No. 47)

EXHIBIT B

IRS FORM 8038-G

See IRS Form 8038-G (Tab No. 31)



500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130  
[www.jacksonkelly.com](http://www.jacksonkelly.com)

DIRECT NO. (304) 340-1318

FAX NO. (304) 340-1272

EMAIL: [sgee@jacksonkelly.com](mailto:sgee@jacksonkelly.com)

December 7, 2015

**CERTIFIED - RETURN**  
**RECEIPT REQUESTED**

Internal Revenue Service Center  
Ogden, UT 84201

Re: City of Nitro Sewer Revenue Bond Anticipation Notes  
Series 2015

Ladies and Gentlemen:

Enclosed are two copies of Form 8038-G, Information Return for Tax-Exempt Governmental Obligations, relative to the above-described issue. Please file one copy and return one copy marked "Filed" to the undersigned in the enclosed postage paid, self-addressed envelope.

Very truly yours,

Samme L. Gee

SLG/vmo

Enclosures

CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A  
(WEST VIRGINIA CWSRF PROGRAM)  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

3.11

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

The Huntington National Bank, Cincinnati, Ohio, hereby accepts appointment as Depository Bank in connection with a Bond and Note Ordinance of the City of Nitro (the "Issuer"), passed by the Issuer on October 20, 2015, effective November 17, 2015, and Supplemental Resolutions adopted by the Issuer on November 17, 2015 (collectively, the "Ordinance"), authorizing the issuance of the City of Nitro Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program), in the aggregate principal amount of \$679,519, dated December 3, 2015; and the City of Nitro Sewerage System Bond Anticipation Notes, Series 2015, in the aggregate principal amount of \$6,735,000, dated December 3, 2015, and agrees to serve as Depository Bank, all as set forth in the Ordinance.

Witness my signature on this 3<sup>rd</sup> day of December, 2015.

THE HUNTINGTON NATIONAL BANK



\_\_\_\_\_  
Authorized Officer

# City of Nitro

P.O. Box 308  
Nitro, WV 25143

November 17, 2015

Ms. Tina J. Hall, Community Development Specialist II  
Management Section, Department of Environmental Protection  
Division of Water and Waste Management  
State Revolving Fund  
601 57th Street  
Charleston, WV 25304

RE: Nitro Regional Wastewater Utility Board (SRF#: C-544464) Payment Request # 1

Dear Ms. Hall,

Attached is payment request No. 1 for \$ \$ 679,519.00 with resolution and invoice copies for your review. This payment request is paying off the interim financing with Huntingtin Banks that has been in place since September, 2013. This project is funded by a Bond Anticipation Note to be refinanced with funds from the WV Clean Water State Revolving Loan Fund when funds become available. This request is to validate all invoices prior to payment for eligibility and budgetary requirements. If you have any questions, please contact me, Terry Martin or Sojuana Ellis of the Regional Council for further information.

Vendor	Inv Date	Amount	Paid by Br. Loan
S&S Engineers Inc.	9/11/2013	\$ 82,000.00	\$ 82,000.00
S&S Engineers Inc.	9/11/2013	\$ 70,000.00	\$ 70,000.00
Young & Associates	9/11/2013	\$ 2,700.00	\$ 2,700.00
NRWWU CJ Hughes	9/20/2013	\$ 105,000.00	\$ 105,000.00
S&S Engineers Inc.	1/13/2014	\$ 98,000.00	\$ 98,000.00
S&S Engineers Inc.	3/21/2014	\$ 168,000.00	\$ 168,000.00
Tri State Pipeline	11/13/2014	\$ 76,319.00	\$ 76,319.00
S&S Engineers Inc.	3/2/2015	\$ 77,500.00	\$ 77,500.00
	TOTAL	\$ 679,519.00	\$ 679,519.00

The Nitro Regional Wastewater Utility Board will not issue a payment without prior written approval of the WV Division of Environmental Protection.

Respectfully,



David Casebolt,  
Mayor and Utility Board President

Copy/file

J Young  
S&S Engineers  
Regional Council





# REGIONAL INTERGOVERNMENTAL COUNCIL

BOONE. CLAY. KANAWHA. PUTNAM. COUNTIES

Chairman  
**JERRY LINKINOGGOR**

Executive Director  
**MARK A. FELTON**

Date: 17-Nov-15

TO: David Casebolt  
Nitro Regional Wastewater Utility Chairman

FROM: Sojuana Ellis  
Project Administrator

RE: Nitro Regional Wastewater Utility Improvements  
Drawdown Number: 1

I have reviewed the attached invoices and find them to be eligible within WV DEP SRF Loan guidelines.

This first payment request is to payoff the interim loan of Huntington Banks with the Bond Anticipation Note for invoices that have been currently approved by the NRWU and the WV DEP. This BAN will be converted to a conventional Clean Water State Revolving Fund Loan at a later date.

Interim Financing Invoices		
Vendor	Date & Inv No.	Amount
S&S Engineers Inc.	9/11/2013	\$ 82,000.00
S&S Engineers Inc.	9/11/2013	\$ 70,000.00
Young & Associates	9/11/2013	\$ 2,700.00
NRWWU CJ Hughes	9/20/2013	\$ 105,000.00
S&S Engineers Inc.	1/13/2014	\$ 98,000.00
S&S Engineers Inc.	3/21/2014	\$ 168,000.00
Tri State Pipeline	11/13/2014	\$ 76,319.00
S&S Engineers Inc.	3/2/2015	\$ 77,500.00
	TOTAL	\$ 679,519.00

If I can be of further assistance, please let me know.

Encl.

315 D Street South Charleston, WV 25303 Phone: 304 744 4258 Fax: 304 744 2534  
website: [www.wvregion3.org](http://www.wvregion3.org) email: [mail@wvregion3.org](mailto:mail@wvregion3.org)

## **TAX COMPLIANCE POLICY**

### **City of Nitro, West Virginia Post-Issuance Tax Compliance Procedures For Tax-Exempt Bonds**

**November 17, 2015**

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt bonds (the “Bonds”) issued by the City of Nitro, West Virginia (the “City”) so as to maximize the likelihood that all applicable post-issuance requirements of the applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations promulgated thereunder (“Treasury Regulations”) needed to preserve the tax-exempt status of the Bonds are met. This Policy establishes a permanent, ongoing structure of practices and procedures that will facilitate compliance with the requirements to maintain the tax-exempt status of individual debt obligations.

The City reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The City also reserves the right to change these policies and procedures from time to time.

#### **General**

Inasmuch as the City is an issuer of Bonds (including refunding Bonds) for governmental purposes or is a responsible conduit issuer authorizing the issuance of 501(c)(3) Bonds or Bonds (including refunding Bonds) for certain “exempt facilities” (e.g., solid waste disposal facilities, sewage facilities, water furnishing facilities, etc.), the City now identifies post-issuance tax compliance procedures for all Bonds authorized by the City. These post-issuance tax compliance procedures set forth the procedures for the City for all Bonds issued by the City and, in the case of Bonds for which the City is a conduit issuer, the City’s requirements of all entities receiving the benefit of the Bond issue (whether through a loan, a lease or otherwise, the “Borrower”), concerning these procedures. All Borrowers shall cause satisfactory policies and procedures to be put in place. Attachment A provides a sample of what the City deems satisfactory.

#### **Post-Issuance Compliance Requirements**

##### **External Advisors / Documentation**

The City and the Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status. Those requirements and procedures shall be documented in the tax certificate or tax regulatory agreement (the “Tax Certificate”) and/or other documents finalized at or before issuance of the Bonds. Those requirements and procedures shall include future compliance with applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds.

The City and the Borrower also shall engage bond counsel and other legal counsel and advisors, as needed, for consultation following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with any potential changes in use of Bond-financed or refinanced assets.

When necessary, the City shall engage and shall encourage or require any Borrower to engage expert advisors (each a “Rebate Service Provider”) to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds in the manner more fully set forth in the Model Borrower Procedures (Attachment A hereto).

Unless otherwise provided by the indenture relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or other financial institution, and the investment of Bond proceeds shall be managed by the City or, in the event the City is the conduit issuer of the Bonds, the Borrower. The City or, in the event the City is the conduit issuer of the Bonds, the Borrower shall prepare (or cause the trustee to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statement shall be delivered to the City if it so requests.

#### Compliance Officer

The [Clerk] [Treasurer] [Business Manager] [Finance Director][Administrator] (the “Compliance Officer”) shall be responsible for monitoring post-issuance compliance issues. The Compliance Officer will coordinate procedures for record retention and review of such records. All documents and other records relating to tax-exempt obligation issued by the City shall be maintained by or at the direction of the Compliance Officer. In maintaining such documents and records, the Compliance Officer will comply with applicable Internal Revenue Service (“IRS”) requirements, such as those contained in Revenue Procedure 97-22.D. The Compliance Officer shall be aware of options for voluntary corrections for failure to comply with post-issuance compliance requirements (such as remedial actions under Section 1.141-12 of the Regulations and the Treasury's Tax-Exempt Bonds Voluntary Closing Agreement Program) and take such corrective action when necessary and appropriate. The Compliance Officer will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.

The City or, in the event the City is the conduit issuer of the Bonds, the Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to undertake the tasks listed above. The City shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

All relevant records and contracts shall be maintained as described below.

## Arbitrage Rebate and Yield

The City or, in the event the City is a conduit issuer of the Bonds, the Borrower shall be responsible for compliance with all requirements under Federal arbitrage regulations. The City or, as more fully set forth in the Model Borrower Procedures, if applicable, the Borrower is responsible for the following:

- A. Determining the likelihood of complying with an arbitrage rebate exemption;
- B. If necessary, (i) engaging the services of a Rebate Service Provider, (ii) prior to each rebate calculation date, causing the trustee to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider, and (iii) if necessary, contributing, or causing the trustee to contribute any required annual payments into any rebate fund;
- C. Providing to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
- D. Monitoring efforts of the Rebate Service Provider;
- E. Assuring payment of required rebate mounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed or matures;
- F. During the construction period of each capital project financed in whole or in part by Bonds, monitoring the investment and expenditure of Bond proceeds and consulting with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months or 18 months, as applicable, following the issue date of the Bonds; and
- G. Retaining copies of all arbitrage reports and trustee statements as described below under "Record Keeping Requirements" and, upon request, providing such copies to the City.

The City or, in the event the City is the conduit issuer of the Bonds, the Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to undertake the tasks listed above. The Borrower shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

For the Purposes of Complying with the Code's arbitrage restrictions, the Compliance Officer will:

- A. Confirm that a certification of the initial offering prices of the tax-exempt obligations with such supporting data, if any, required by bond counsel, is included in the closing documents for the issue.
- B. Confirm that a computation of the yield on such issue from the Issuer's financial advisor or bond counsel (or an outside arbitrage rebate specialist) is contained in the closing documents.

C. Coordinate the tracking of expenditures, including the expenditure of any investment earnings. If the project(s) to be financed with the proceeds of tax-exempt obligations will be funded with multiple sources of funds, confirm that the Issuer has adopted an accounting methodology that maintains each source of financing separately and monitors the actual expenditure of proceeds of such tax-exempt obligations.

D. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures. This procedure shall include an examination of the expenditures made with proceeds of the tax-exempt obligations within 18 months after each project financed by tax-exempt obligations is placed in service and, if necessary, a reallocation of expenditures in accordance with Section 1.148-6(d) of the Treasury Regulations.

E. Monitor compliance with the applicable “temporary period” (as defined in the Code and Treasury Regulations) exceptions for the expenditure of proceeds of the issue, and provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.

F. Ensure that investments acquired with proceeds of such issue are purchased at fair market value. In determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used.

G. Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.

H. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.

I. Identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.

J. Monitor compliance with six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.

K. Procure a timely computation of any rebate liability and, if rebate is due, to file a Form 8038-T and to arrange for payment of such rebate liability.

L. Arrange for timely computation and payment of “yield reduction payments” (as such term is defined in the Code and Treasury Regulations), if applicable.

#### Use of Bond Proceeds and Bond-Financed or Refinanced Assets

The City or, in the event the City is a conduit issuer of the Bonds, the Borrower shall be responsible for monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of

the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

A. Maintaining records identifying the assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before bond issuance), including a final allocation of Bond proceeds as described below under “Record Keeping Requirements”;

B. Consulting with bond counsel and other legal counsel and advisers in the review of any change in use of Bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

C. Conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;

D. To the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified Bonds, if such counsel advises that a remedial action is necessary;

E. When required, to the extent that Bond proceeds were used to acquire an existing building, confirming that qualified rehabilitation expenditures in an amount equal to at least 15% of the amount of such proceeds were made no later than 24 months after the later of (1) the date of issuance of the Bonds, or (2) the date of acquisition of the building;

F. When required, confirming that less than 25% of Bond proceeds were used to acquire land;

G. With respect to facilities that dispose of solid waste by reconstituting, converting or otherwise recycling it into material that is not waste, determining annually whether solid waste (as identified or described at the time of issuance of the Bonds) constitutes at least 65%, by weight or volume, of the total materials introduced into the reconstituting, converting or recycling process. This provision is subject to amendment or deletion depending on the content of any new regulations promulgated by the United States Treasury regarding the definition of solid-waste disposal facilities; and

H. With respect to other types of exempt facilities, adopting any such procedures that bond counsel deems appropriate to periodically assess whether such facility continues to qualify as an exempt facility.

### **Private Activity Concerns**

The following polices relate to the monitoring and tracking of private uses and private payments with respect to facilities financed with the Obligations. The Compliance Officer will:

A. Maintain records determining and tracking facilities financed with tax-exempt obligations and the amount of proceeds spent on each facility.

B. Maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of an issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.

C. Monitor private use of financed facilities to ensure compliance with applicable limitations on such use. Examples of potential private use include:

1. Sale of the facilities, including sale of capacity rights;
2. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;
3. Management contracts (in which the Issuer authorizes a third party to operate a facility, e.g., cafeteria) and research contracts;
4. Preference arrangements (in which the Issuer permits a third party preference, such as parking in a public parking lot);
5. Output contracts or other contracts for use of utility facilities (including contracts with large utility users);
6. Development agreements which provide for guaranteed payments or property values from a develop

#### Record Keeping Requirement

The City or, in the event the City is a conduit issuer of the Bonds, the Borrower shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least 3 years:

A. A copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Bonds;

B. A copy of all material documents relating to capital expenditures financed or refinanced by Bond process, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds and the final completion report filed pursuant to the loan agreement, lease or similar document; and

C. A copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statement, in connection with any investment agreements, and copies of all bidding documents, if any.

The Borrower, in the Tax Certificate relating to the Bonds and/or other documents finalized at or before the issuance of the Bonds, shall identify an employee and/or officer to retain the records listed above. The Borrower shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

Reissuance

The Compliance Officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance for federal tax purposes.



## Attachment A

### **SAMPLE City of Nitro, West Virginia Borrower Post-Issuance Tax Compliance Procedures For Tax-Exempt Bonds**

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt bonds (the “Bonds”) issued on behalf of \_\_\_\_\_ (the “Borrower”) so as to maximize the likelihood that all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds are met. The Borrower reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant provided, any exceptions to these procedures shall not be made without engaging bond counsel or other legal counsel for consultation for a determination that such exception would not cause the Bonds to lose their tax-exempt status and notification to the City of such exception. The Borrower also reserves the right to change these policies and procedures from time to time. The Borrower shall also be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

#### **General**

The Borrower now identifies post-issuance tax compliance procedures for all Bonds issued on its behalf.

#### **Post-Issuance Compliance Requirements**

##### External Advisors / Documentation

The Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status. The Borrower also shall engage bond counsel and other legal counsel and advisors, as needed, for consultation following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with any potential changes in use of Bond-financed or refinanced assets.

The Borrower shall be responsible for determining (or obtain expert advice to determine) whether arbitrage rebate calculations have to be made for the Bond issue. If it is determined that such calculations are or are likely to be required, the Borrower shall engage expert advisors (each a “Rebate Service Provider”) to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds, or else shall ensure that it has adequate financial, accounting and legal resources of its own to make such calculations, Borrower shall make any rebate payments required on a timely basis.

Unless otherwise provided by the indenture relating to the Bonds, unexpended Bond proceeds shall be held by a trustee or other financial institution, and the investment of Bond proceeds shall be managed by the Borrower. The Borrower shall prepare (or cause the trustee or other financial institution to prepare) regular, periodic statements regarding the investments and transactions involving Bond proceeds and such statements shall be delivered to the bond issuer if it so requests.

#### Arbitrage Rebate and Yield

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for overseeing compliance with arbitrage rebate requirements under federal tax regulations:

1) If at the time of Bond Issuance, based on reasonable expectations set forth in the Tax Certificate or Tax Regulatory Agreement (the "Tax Certificate"), it appears likely that the Bond issue will qualify for an exemption from the rebate requirement, the Borrower may defer taking any of the actions set forth in the subsection (2). Not later than the time of completion of construction or acquisition of the Bond-financed project, and depletion of all funds from the project fund, the Borrower shall make a determination if expenditure of the Bond proceeds qualified for exemption from the rebate requirements based on spending within a 6-month or 18-month period after issuance. If rebate exemption is determined to be applicable, Borrower shall prepare and keep in the permanent records of the Bond issue a memorandum evidencing this conclusion together with records of expenditure to support such conclusion. If the transaction does not qualify for rebate exemption, Borrower shall initiate the steps set forth in (2) below.

2) If at the time of Bond issuance it appears likely that arbitrage rebate calculations will be required, or upon determination that calculations are required pursuant to (1) above, Borrower shall:

- if necessary, (i) engage the services of a Rebate Service Provider, (ii) prior to each rebate calculation date, cause the trustee or other financial institution investing bond proceeds to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider, and (iii) if necessary, contributing, or causing the trustee to contribute any required annual payments into any rebate fund;
- provide to the Rebate Service Provider additional documents and information reasonable requested by the Rebate Service Provider;
- monitor efforts of the Rebate Service Provider;
- assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed or matures;

- during the construction period of each capital project financed in whole or in part by Bonds, monitor the investment and expenditure of Bond proceeds and consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months, as applicable, following the issue date of the Bonds;
- retain copies of all arbitrage reports and trustee statements as described below under “Record Keeping Requirements” and, upon request, providing such copies to the Bond issuer; and
- in lieu of engaging an outside Rebate Service Provider, the Borrower may make a determination that it has sufficient capabilities using its own personnel, supported by its regular accounting and legal advisers, to be able to make the required rebate calculations. Such determination shall be evidenced in writing with specific reference to the personnel and advisers to carry out the calculations, and such written determination shall be maintained in the records of the Bond transaction.

Use of Bond Proceeds and Bond-Financed or Refinanced Assets:

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for:

- monitoring the use of Bond proceeds (including investment earnings and including reimbursement of expenditures made before Bond issuance) and the use of Bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds (including investment earnings and including reimbursement of expenditures made before Bond issuance), including a final allocation of Bond proceeds as described below under “Record Keeping Requirements”;
- consulting at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discussing any existing or planned use of Bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Tax Certificate relating to the Bonds;
- to the extent that the Borrower discovers that any applicable tax restrictions regarding use of Bond proceeds and Bond-financed or refinanced

assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified Bonds, if such counsel advises that a remedial action is necessary;

- when required, to the extent that Bond proceeds were used to acquire an existing building, confirming that qualified rehabilitation expenditures in an amount equal to at least 15% of the amount of such proceeds were made no later than 24 months after the later of (1) the date of issuance of the Bonds, or (2) the date of acquisition of the building;
- when required, confirming that less than 25% of Bond proceeds were used to acquire land; and
- [with respect to facilities that dispose of solid waste by reconstituting, converting or otherwise recycling it into material that is not waste, determining annually whether solid waste (as identified or described at the time of issuance of the Bonds) constitutes at least 65%, by weight or volume, of the total materials introduced into the reconstituting, converting or recycling process. This provision is subject to amendment or deletion depending on the content of any new regulations promulgated by the United States Treasury regarding the definition of solid-waste disposal facilities;]

All relevant records and contracts shall be maintained as described below.

#### Record Keeping Requirement

[TITLE OF EMPLOYEE/OFFICER OF BORROWER] shall be responsible for maintaining the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least 3 years:

- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Borrower at or in connection with closing of the issue of Bonds;
- a copy of all material documents relating to capital expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds and the Final Completion Report filed pursuant to the Loan Agreement; and
- a copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any.

DATED: \_\_\_\_\_

[BORROWER]

By \_\_\_\_\_  
[Title]

# Young & Associates, CPAs|AC

## Accounting, Tax, and Consulting Services

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Phone: (304) 755-7717

4111 1<sup>st</sup> Avenue · Nitro, WV 25143

Fax: (304) 755-7719

December 3, 2015

CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A  
(WEST VIRGINIA CWSTF PROGRAM)

City of Nitro  
Nitro, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

West Virginia Department of Environmental Protection  
Charleston, West Virginia

Crews & Associates, Inc.  
Charleston, West Virginia

Ladies and Gentlemen:

I have reviewed the rates and charges enacted by the City of Nitro (the "City") on December 18, 2012 and currently in effect, and the projected operating expenses and anticipated customer usage provided by S&S Engineers, Inc., the consulting engineer for the City. Based on this information, it is my opinion that such rates are sufficient (a) to provide for all operating expenses of the sewerage system of the Issuer (the "(System)", and (b) 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 City's Sewer Revenue Bonds, Series 2015 A (West Virginia CWSRF Program) (the "Series 2015 A Bonds"), and all other obligations secured by or payable from revenues of the System on a parity with the Series 2015 A Bonds, including the City's (i) \$4,575,902 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 1996 A, dated December 10, 1996 (the "Series 1996 A Bonds"); (ii) \$2,050,000 Sewer Revenue Bonds (West Virginia Water Development Authority), Series 2000 A, dated June 28, 2000 (the "Series 2000 A Bonds"); (iii) \$543,900 Sewer Revenue Bonds (West Virginia SRF Program), Series 2001 A, dated June 5, 2001 (the "Series 2001 A Bonds"); and (iv) \$1,910,778 Sewer Revenue Bonds, (West Virginia SRF Program), Series 2009 A, dated November 12, 2009 (the "Series 2009 A Bonds"). The Series 1996 A Bonds, the Series 2000 A Bonds, the Series 2001 A Bonds, and the Series 2009 A Bonds are collectively

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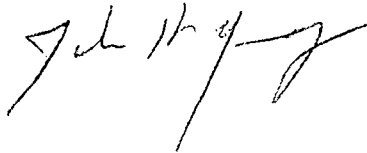
City of Nitro  
West Virginia Water Development Authority  
West Virginia Department of Environmental Protection  
Crews & Associates, Inc.  
Jackson Kelly PLLC  
December 3, 2015  
Page 2

referred to as the "Prior Bonds". The Series 2013 A Notes will be paid in full with the proceeds of the Series 2015 A Bonds.

It is further my opinion that (i) the net revenues for the fiscal year following the year in which the Series 2015 A Bonds are to be issued will be at least 115% of the average annual debt service requirements on the Prior Bonds and the Series 2015 A Bonds; and (ii) the Net Revenues actually derived from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Series 2015 A Bonds, will not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding year on the Prior Bonds and the series 2015 A Bonds.

Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance authorizing the Series 2015 A Bonds.

Very Truly Yours,

A handwritten signature in black ink, appearing to be "John H. [unclear]", written in a cursive style.

CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A  
(WEST VIRGINIA CWSRF PROGRAM)  
SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2015

3.4

CERTIFICATE OF CONSULTING ENGINEER

I, Jessie O. Parker, Jr., Registered Professional Engineer, West Virginia License No. 17735, of S & S 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 consisting of the replacement of various sewer lines located in Kanawha and Putnam County, West Virginia, and other upgrades and improvements to the existing System (as hereinafter defined), together with all appurtenant facilities (the "Project") to the existing public sewerage system (the "System") of the City of Nitro (the "Issuer"), to be constructed primarily in Putnam County, West Virginia, which Project is being permanently financed by the above-captioned bonds (the "Bonds") and notes (the "Notes") of the Issuer. All capitalized words used herein and not defined herein shall have the same meaning set forth in the Bond and Note Ordinance passed by the Issuer on October 20, 2015, effective November 17, 2015, as supplemented by Supplemental Resolutions adopted by the Issuer on November 17, 2015, and the Bond Purchase Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection ("DEP"), dated December 3, 2015.

2. The Bonds and Notes are being issued for the purposes of capitalizing interest on the Bonds, funding the Reserve Account for the Bonds, paying Costs of the Project not otherwise provided for (including the payment of the Notes), paying costs of issuance of the Bonds and related costs, or any or all of such purposes, as determined by Supplemental Resolutions.

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 30 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 B attached hereto as Exhibit A, and my firm 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

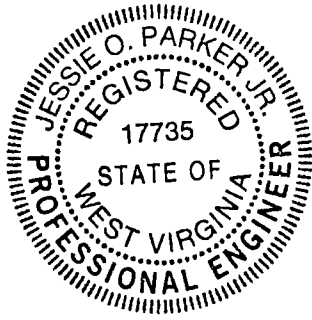


operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof, the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Funding Assistance 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; (xi) the successful bidders have provided the Dreg-Free Workplace Affidavit as evidence of the Vendor's compliance with the provisions of Article 1D, Chapter 21 of the West Virginia Code; and (xii) attached hereto as Exhibit A is the final amended "Schedule B - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

4. The Project will serve approximately 94 new customers in the Blakes Creek and Eastwood Acres areas.

WITNESS my signature and seal on this 3<sup>rd</sup> day of December, 2015.

[SEAL]



S & S ENGINEERS INC.

A handwritten signature in black ink, appearing to read "JOP", written over a horizontal line.

Jessie O. Parker, Jr., P.E.  
West Virginia License No. 17735

**EXHIBIT A**

Schedule A

[See Attached]

**WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL**  
**SCHEDULE B – TOTAL PROJECT**  
**NITRO REGIONAL WASTEWATER UTILITY - WASTEWATER SYSTEM IMPROVEMENTS**  
**SEWER PROJECT - IJDC #2013S-1427, DEP CWSRF C-544273**  
**COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING**

A. Cost of Project	Total Project (d + e)	(a) Bank BAN	(b) Estimated Expense for Construction BAN	(c) NRWU Expense Eligible in CWSRF Program	(d) CWSRF (a + b + c)	(e) NRWU Expense not Eligible in CWSRF Program
<b>1. Construction</b>						
a. Contract	\$ 4,914,491.00	\$ -	\$ 4,914,491.00	\$ -	\$ 4,914,491.00	\$ -
b. Equipment*	\$ 475,000.00	\$ -	\$ 475,000.00	\$ -	\$ 475,000.00	\$ -
c. Additional Emergency Repair Work**	\$ 175,625.00	\$ -	\$ 175,625.00	\$ -	\$ 175,625.00	\$ -
<b>2. Technical Services</b>						
a. Planning	\$ 45,000.00	\$ 45,000.00	\$ -	\$ -	\$ 45,000.00	\$ -
b. Design	\$ 445,800.00	\$ 430,000.00	\$ 15,800.00	\$ -	\$ 445,800.00	\$ -
c. Engineering During Construction	\$ 50,000.00	\$ -	\$ 50,000.00	\$ -	\$ 50,000.00	\$ -
d. Special Services	\$ 73,500.00	\$ 20,500.00	\$ 53,000.00	\$ -	\$ 73,500.00	\$ -
e. Inspections Services	\$ 464,500.00	\$ -	\$ 464,500.00	\$ -	\$ 464,500.00	\$ -
<b>3. Legal &amp; Fiscal</b>						
a. Legal - Local	\$ 130,000.00	\$ -	\$ 130,000.00	\$ -	\$ 130,000.00	\$ -
b. Legal - PSC	\$ 20,000.00	\$ -	\$ 20,000.00	\$ -	\$ 20,000.00	\$ -
c. Accounting**	\$ 15,000.00	\$ 2,700.00	\$ 5,062.00	\$ 7,238.00	\$ 15,000.00	\$ -
d. Project Coordinator / Administrator	\$ 40,000.00	\$ -	\$ 40,000.00	\$ -	\$ 40,000.00	\$ -
<b>4. Sites and Other Lands</b>						
a. Sites and Lands	\$ 15,000.00	\$ -	\$ -	\$ -	\$ -	\$ 15,000.00
b. Right-of-way Activities**	\$ 10,000.00	\$ -	\$ 4,400.00	\$ 5,600.00	\$ 10,000.00	\$ -
<b>5. Miscellaneous</b>						
a. Permits**	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00	\$ 5,000.00	\$ -
b. Electrical Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>6. Refinancing Pump Station 8 Improvements*</b>	\$ 438,919.00	\$ 181,319.00	\$ -	\$ 257,600.00	\$ 438,919.00	\$ -
<b>7. Contingency</b>	\$ 254,505.00	\$ -	\$ 254,505.00	\$ -	\$ 254,505.00	\$ -
<b>8. Total of Lines 1 through 7</b>	\$ 7,572,340.00	\$ 679,519.00	\$ 6,602,383.00	\$ 275,438.00	\$ 7,557,340.00	\$ 15,000.00
<b>B. Cost of Financing</b>						
9. a. Bank BAN Financing Cost***	\$ 60,000.00	\$ -	\$ -	\$ -	\$ -	\$ 60,000.00
b. Construction BAN Interest Cost***	\$ 417,500.00	\$ -	\$ -	\$ 150,000.00	\$ 150,000.00	\$ 267,500.00
c. Construction BAN Closing Cost****	\$ 145,000.00	\$ -	\$ -	\$ 145,000.00	\$ 145,000.00	\$ -
<b>10. Other Costs</b>						
a. Bond Counsel (BAN)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
b. Bank Registrar Fee (BAN)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
c. Bond Counsel (CWSRF)	\$ 30,000.00	\$ -	\$ -	\$ 30,000.00	\$ 30,000.00	\$ -
d. Bank Registrar Fee (CWSRF)	\$ 2,000.00	\$ -	\$ -	\$ 2,000.00	\$ 2,000.00	\$ -
<b>11. Total Cost of Financing (sum of lines 9a - 10d)</b>	\$ 654,500.00	\$ -	\$ -	\$ 327,000.00	\$ 327,000.00	\$ 327,500.00
<b>12. Total Project Cost (line 8 plus line 11)</b>	\$ 8,226,840.00	\$ 679,519.00	\$ 6,602,383.00	\$ 602,438.00	\$ 7,884,340.00	\$ 342,500.00
<b>C. Sources of Funds</b>						
13. Federal Grants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
14. State Grants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
15. Other Grants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
16. Total of Sources	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
17. Size of Bond Issue	\$ -	\$ -	\$ -	\$ -	\$ 7,884,340.00	\$ -

*Dawn Corbett*  
 Signature of Authorized Representative  
 OCT 13, 2015  
 Date

*[Signature]*  
 Signature of Consulting Engineer  
 10/13/2015  
 Date

- \* Items 1b and 6 are anticipated to be purchased/reimbursed through CWSRF only.
- \*\* Items 1c, 3c, 4b and 5a paid by NRWU are anticipated to be reimbursed through CWSRF.
- \*\*\* NRWU has been paying interest on Bank BAN and anticipates paying interest on the Construction BAN to be reimbursed through CWSRF.
- \*\*\*\* Underwriters discount, legal and related expenses to be reimbursed through CWSRF.

**WEST VIRGINIA MUNICIPAL BOND COMMISSION**

900 Pennsylvania Ave, Suite 1117  
Charleston, WV 25302  
(304) 558-3971

3.10(A)

**NEW ISSUE REPORT FORM**

Date of Report: December 3, 2015

ISSUE: City of Nitro Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program)

ADDRESS: P.O. Box 607, Nitro, WV 25143 COUNTY: Putnam

PURPOSE OF ISSUE: New Money  X  
Refunding:  Refunds issue(s) dated: \_\_\_\_\_

ISSUE DATE: December 3, 2015 CLOSING DATE: December 3, 2015

ISSUE AMOUNT: \$679,519 RATE: 0.5% 0.5% Admin

1st DEBT SERVICE DUE: December 1, 2017 1st PRINCIPAL DUE: December 1, 2017

1st DEBT SERVICE AMOUNT: \$ 8,509.74 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC UNDERWRITERS COUNSEL: Kauffelt & Kauffelt  
Contact Person: Samme L. Gee, Esquire Contact Person: Mark Kauffelt  
Phone: (304) 340-1318 Phone: (304) 345-1272

CLOSING BANK: The Huntington National Bank ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: Jenny Parsons Contact Person: \_\_\_\_\_  
Phone: (304) 348-4537 Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT: OTHER: WV DEP  
Contact Person: Danny Lewis Contact Person: Kim Henderson  
Position: General Manager Function: Program Manager  
Phone: (304) 863-3341 Phone: (304) 926-0499  
E-Mail: ra.lubeckpsd@cascable.net

DEPOSITS TO MBC AT CLOSE: \_\_\_\_\_ Accrued Interest: \$ \_\_\_\_\_  
Capitalized Interest: \$ \_\_\_\_\_  
By \_\_\_\_\_ Wire \_\_\_\_\_ Reserve Account: \$ \_\_\_\_\_  
Check \_\_\_\_\_ Other: \_\_\_\_\_ \$ \_\_\_\_\_

REFUNDS & TRANSFERS BY MBC AT CLOSE:  
By \_\_\_\_\_ Wire \_\_\_\_\_ To Escrow Trustee: \$ \_\_\_\_\_  
Check \_\_\_\_\_ To Issuer: \$ \_\_\_\_\_  
IGT \_\_\_\_\_ To Cons. Invest. Fund \$ \_\_\_\_\_  
To Other: \_\_\_\_\_ \$ \_\_\_\_\_

NOTES: Debt Service Reserve Fund to be funded over 10 years

**FOR MUNICIPAL BOND COMMISSION USE ONLY:**

Documents Required: \_\_\_\_\_  
Transfers Required: \_\_\_\_\_

**WEST VIRGINIA MUNICIPAL BOND COMMISSION**

900 Pennsylvania Ave, Suite 1117  
Charleston, WV 25302  
(304) 558-3971

3.10(B)

**NEW ISSUE REPORT FORM**

Date of Report: December 3, 2015

ISSUE: City of Nitro Sewerage System Bond Anticipation Notes, Series 2015

ADDRESS: P.O. Box 607, Nitro, WV 25143 COUNTY: Kanawha & Putnam

PURPOSE OF ISSUE: New Money X  
Refunding: \_\_\_\_\_ Refunds issue(s) dated: \_\_\_\_\_

ISSUE DATE: December 3, 2015 CLOSING DATE: December 3, 2015

ISSUE AMOUNT: \$6,735,000 RATE: 1.25% - 2.250%

1st DEBT SERVICE DUE: July 1, 2016 1st PRINCIPAL DUE: 1/1/2017\*

1st DEBT SERVICE AMOUNT: \$70,221.67 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC  
Contact Person: Samme L. Gee, Esquire  
Phone: (304) 340-1318

UNDERWRITERS COUNSEL: Steptoe & Johnson PLLC  
Contact Person: John Stump  
Phone: (304) 353-8196

CLOSING BANK: The Huntington National Bank  
Contact Person: Cheri Scott-Geraci  
Phone: (513) 366-3073

ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT:  
Contact Person: Danny Lewis  
Position: General Manager  
Phone: (304) 755-3669  
E-Mail: dlewisnrwu@live.com

OTHER: WV DEP  
Contact Person: Kim Henderson  
Function: Program Manager  
Phone: (304) 926-0499

DEPOSITS TO MBC AT CLOSE: \_\_\_\_\_ Accrued Interest: \$ \_\_\_\_\_  
Capitalized Interest: \$ \_\_\_\_\_  
By \_\_\_\_\_ Wire \_\_\_\_\_ Reserve Account: \$ \_\_\_\_\_  
Check \_\_\_\_\_ Other: \$ \_\_\_\_\_

REFUNDS & TRANSFERS BY MBC AT CLOSE:  
By \_\_\_\_\_ Wire \_\_\_\_\_ To Escrow Trustee: \$ \_\_\_\_\_  
Check \_\_\_\_\_ To Issuer: \$ \_\_\_\_\_  
IGT \_\_\_\_\_ To Cons. Invest. Fund \$ \_\_\_\_\_  
To Other: \$ \_\_\_\_\_

NOTES: NR-1 - \$2,000,000 matures 1/1/17; NR-2 - \$2,000,000 matures 1/1/18; and NR-3 - \$2,735,000 matures 1/1/19; will be paid from issuance of future bonds to CWSRF (no monthly payment).

**FOR MUNICIPAL BOND COMMISSION USE ONLY:**

Documents Required: No reserve requirement.  
Transfers Required: \_\_\_\_\_

## SWEEP RESOLUTION

**WHEREAS**, the City of Nitro (the "Issuer") is a governmental body and political subdivision of West Virginia;

**WHEREAS**, the Issuer has issued bonds and notes, as more specifically set forth on Exhibit A, attached hereto and incorporated herein by reference (the "Bonds" or "Notes", respectively);

**WHEREAS**, the Issuer makes or will make monthly debt service payments on and transfers reserve funds for the Bonds and Notes by check to the West Virginia Municipal Bond Commission (the "MBC") which in turn pays the owners of the Bonds and Notes and deposits funds in the Bond reserve account;

**WHEREAS**, the MBC may accept such monthly payments by electronic funds transfer, thereby eliminating delay in payments and lost checks;

**WHEREAS**, pursuant to Chapter 13, Article 3, Section 5a, the MBC has established fees for its services (the "MBC Fee");

**WHEREAS**, the Issuer finds and determines that it is in the best interest of the Issuer, its citizens and the owners of the Bonds and Notes that the monthly debt service and reserve fund payments be made by electronic funds transfer with the State Treasurer **sweeping** the Issuer's account.


### **NOW THEREFORE BE IT RESOLVED AS FOLLOWS:**

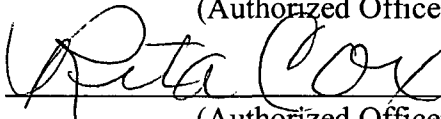
1) The monthly debt service payments on the Bonds and Notes, as set forth in Exhibit A, along with the MBC Fee, shall be made to the MBC by an electronic transfer by the State Treasurer from the accounts set forth in Exhibit A in such form and at such directions as are provided by the MBC.

2) The Mayor and Recorder/Treasurer are hereby authorized to sign and execute all such documents as are necessary to facilitate the electronic transfer of the Bond and Note debt service and reserve fund payments.

3) This resolution shall be effective immediately upon adoption.

Adopted this 17th day of November, 2015.

  
\_\_\_\_\_  
(Authorized Officer)

  
\_\_\_\_\_  
(Authorized Officer)

CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2015 A  
(WEST VIRGINIA CWSRF PROGRAM)

RECEIPT FOR PAYMENT OF PRIOR NOTES

The undersigned duly authorized representative of The Huntington National Bank, the registered owner of the Sewerage System Design Bond Anticipation Notes, Series 2013 A (The Huntington National Bank) (the "Prior Notes"), of the City of Nitro (the "Issuer"), dated September 20, 2013, in the original aggregate principal amount of \$800,000, hereby certifies that it has received \$679,519, from the Issuer to pay in full the Prior Notes and discharge the liens, pledges and encumbrances securing the Prior Notes.

WITNESS my signature on this 3<sup>rd</sup> day of December, 2015.

THE HUNTINGTON NATIONAL BANK

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



City of Nitro  
Sewerage System Bond Anticipation Notes, Series 2015

REGISTRAR'S CERTIFICATE


The Huntington National Bank, Cincinnati, Ohio, (the "Bank"), as Registrar for the above-captioned Notes (the "Notes"), hereby certifies this 3<sup>rd</sup> day of December, 2015 as follows, all capitalized terms used herein to have the same meanings set forth in the Bond and Note Ordinance of the City of Nitro (the "Issuer") adopted October 20, 2015, effective November 17, 2015, as supplemented by a Supplemental Parameters Resolution adopted November 17, 2015 and Certificate of Determinations executed by the Mayor on November 24, 2015 (collectively the "Ordinance"):

1. The Bank is a state banking corporation duly organized, validly existing, and in good standing under the laws of the State of West Virginia, may lawfully conduct business in West Virginia, and is lawfully empowered, pursuant to such laws, to accept the duties and obligations contemplated and as provided under the Ordinance and to serve in the capacity of Registrar under the Ordinance.

2. The Bank has duly authorized, by all necessary action, the authentication of the Notes and the execution and delivery of this Certificate and the acceptance of all duties of Registrar under the Ordinance, and any and all other documents and agreements as may be required to be executed, delivered and received by the Bank in order to carry out, give effect to, and consummate the transactions contemplated thereby.

3. The person indicated in paragraph 4 below was at the time of the authentication of the Notes, and is now, a duly elected, qualified and acting incumbent in his or her office; and, pursuant to authorization from the Board of Directors of the Bank, attached hereto as Exhibit A, such person, in his or her official capacity, was and is authorized to authenticate the Notes for and on behalf of the Bank.

4. Appearing opposite the name and title of the person indicated below is a true and correct specimen of his or her signature.

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Cheri Scott-Geraci	Vice President	

5. There have been filed with the Bank all of the documents listed in Section 3.12 of the Ordinance; the Notes have been duly authenticated and delivered to the Original Purchaser, and proceeds of the Notes have been deposited as required by the Ordinance.

6. Attached hereto as EXHIBIT B is a correct listing of the Note numbers, CUSIP numbers, maturity dates, principal amounts, interest rates and price of the Notes.

WITNESS my signature on the day and year first written above.

THE HUNTINGTON NATIONAL BANK

By: Cheri Scott Geraci  
Its: Authorized Officer

EXHIBIT A  
Resolution of Board of Directors

(on file with Registrar)

EXHIBIT B  
CITY OF NITRO

**SERIES 2015 NOTE TERMS**

Bond No.	Maturity Date (January 1)	Principal Amount	Interest Rate	Price
NR-1	2017	\$2,000,000	1.250%	100.00%
NR-2	2018	\$2,000,000	1.750%	100.00%
NR-3	2019	\$2,735,000	2.250%	100.00%



4.1(a)

December 3, 2015

City of Nitro  
Nitro, West Virginia

West Virginia Department of Environmental Protection  
Charleston, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Re: City of Nitro Sewerage System Revenue Bonds, Series 2015 A  
(West Virginia CWSRF Program)

Ladies and Gentlemen:

We are bond counsel to the City of Nitro (the “Issuer”) in connection with the issuance of its Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program), dated the date hereof (the “Bonds”).

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a Bond Purchase Agreement dated December 3, 2015, including all schedules and exhibits attached thereto (the “Bond Purchase Agreement”), among the Issuer, the West Virginia Water Development Authority (the “Authority”), and the West Virginia Department of Environmental Protection (the “DEP”), and (ii) the issue of the Bonds, dated December 3, 2015, to be purchased by the Authority in accordance with the provisions of the Bond Purchase Agreement. The Bonds are issued in the principal amount of \$679,519, in the form of one bond, registered as to principal and interest to the Authority, with interest and principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, beginning December 1, 2017, and ending December 1, 2039, as set forth in the “Schedule Y” attached to the Bond Purchase Agreement and incorporated in and made a part of the Bonds.

The Bonds are issued for the purposes of paying a portion the costs of design, acquisition and construction of the Project.

We have also examined the applicable provisions of Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the “Local Statute”), and the Bond Ordinance duly passed by the Issuer on October 20, 2015, effective November 17, 2015 as supplemented by the Supplemental Resolution duly adopted by the Issuer on November 17, 2015 (collectively, the “Local Act”), pursuant to and under which Local Statute and Local Act the Bonds are authorized and issued, and the Bond Purchase Agreement has been undertaken. 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 Local Act and the Bond Purchase 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 Bond Purchase 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.

2. The Bond Purchase 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 consent of the Authority and the DEP.

3. The Issuer is a duly organized and validly existing municipality, 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 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 Issuer and constitute valid and binding obligations of the Issuer, enforceable against the Issuer 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 Bond Purchase 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 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 Bonds and the Local Act.

6. Under the Act, the Bonds are exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

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

City of Nitro  
West Virginia Department of Environmental Protection  
West Virginia Water Development Authority  
December 3, 2015  
Page 3

No opinion is given herein as to the effect upon enforceability of the 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 the 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,

A handwritten signature in black ink, appearing to read "Jack Kelly" followed by a stylized flourish.



500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130  
www.jacksonkelly.com

December 3, 2015

City of Nitro  
Nitro, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Crews & Associates, Inc.  
Charleston, West Virginia

Re: City of Nitro (West Virginia) Sewerage System Bond Anticipation Notes,  
Series 2015

Ladies and Gentlemen:

We have served as bond counsel to the City of Nitro, West Virginia (the “Issuer”) in connection with the issuance of its Sewerage System Bond Anticipation Notes, Series 2015, dated the date hereof.

We have examined a record of proceedings relating to the issuance by the Issuer of its \$6,735,000 aggregate principal amount of Sewerage System Bond Anticipation Notes, Series 2015 (the “Notes”).

The Notes 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 of the West Virginia Code of 1931, as amended (the “Act”), and a Bond and Note Ordinance duly passed by the Issuer on October 20, 2015, effective November 17, 2015, as supplemented by a Supplemental Parameters Resolution duly adopted by the Issuer on November 17, 2015 and a Certificate of Determinations executed by the Mayor on November 24, 2015 (collectively, the “Ordinance”), and are subject to all the terms and conditions of the Ordinance. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Ordinance when used herein.

The Notes are issued in fully registered form, are dated December 3, 2015, upon original issuance, mature on January 1 in the years and amounts and bear interest payable each January 1 and July 1, commencing July 1, 2016 all as set forth in the Ordinance.

The Ordinance provides that the Notes are issued for the purpose of (i) temporarily paying the costs of acquisition and construction of certain additions, betterments and improvements to the System; and (ii) paying the costs of issuance of the Notes.



The Notes have been sold to Crews & Associates, Inc. (the "Original Purchaser"), pursuant to a Note Purchase Agreement dated November 24, 2015, and accepted by the Issuer (the "Note Purchase Agreement").

As to questions of fact material to our opinion, we have relied upon representations of the Issuer, the Original Purchaser and other entities contained in the Ordinance, the Note Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate and in the certified proceedings and other certifications of certain officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, and assuming compliance with the covenants and representations of the Issuer and others set forth in the Ordinance, the Note Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate and such certifications, we are of the opinion, under existing law, that:

1. The Issuer is a duly organized and validly existing municipal corporation under and pursuant to the laws of the State of West Virginia, with full power and authority to adopt and enact the Ordinance, enter into the Note Purchase Agreement, the Continuing Disclosure Agreement and the Tax Certificate, perform its obligations under the terms and provisions thereof and to issue and sell the Notes, all under the provisions of the Act and other applicable provisions of law.

2. The Issuer, through its governing body, has legally and effectively adopted and enacted the Ordinance, has authorized, executed and delivered the Note Purchase Agreement, the Continuing Disclosure Agreement, and the Tax Certificate, has authorized the distribution of the Official Statement in connection with the marketing and sale of the Notes, and has issued and delivered the Notes to the Original Purchaser pursuant to the Note Purchase Agreement. The Ordinance is in full force and effect as of the date hereof.

3. Assuming due authorization, execution and delivery by the other parties thereto, the Bond Purchase Agreement, the Continuing Disclosure Agreement and the Tax Certificate constitute valid, legal, binding and enforceable instruments of the Issuer in accordance with their respective terms.

4. The Notes have been duly authorized, executed and delivered by the Issuer and, assuming proper authentication, constitute valid and legally enforceable limited obligations of the Issuer, payable from, and secured by a lien on, the proceeds of future bonds to be issued by the Issuer. The interest on the Notes is payable from and secured by the Surplus Revenues of the System. The Notes are junior and subordinate to the Issuer's: (i) Sewer Revenue Bonds (West Virginia Water Development Authority), Series 1996 A, dated December 10, 1996, issued in the original aggregate principal amount of \$4,575,502 (the "Series 1996 A Bonds"); (ii) Sewer Revenue Bonds (West Virginia Water Development Authority), Series 2000 A, dated June 28, 2000, issued in the original aggregate principal amount of \$2,050,000 (the "Series 2000 A

Bonds”); (iii) Sewer System Revenue Bonds, Series 2001 A (West Virginia SRF Program), dated June 5, 2001, issued in the original aggregate principal amount of \$543,800 (the “Series 2001 A Bonds”); (iv) Sewer Revenue Bonds (West Virginia SRF Program), Series 2009 A, dated November 12, 2009, issued in the original aggregate principal amount of \$1,910,778 (the “Series 2009 A Bonds”); and (v) Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program), to be issued simultaneously with the Notes, in the original aggregate principal amount of \$679,519 (the “Series 2015 A Bonds”) (collectively, the “Prior Bonds”). The Notes are enforceable in accordance with their terms and the terms of the Ordinance, and are entitled to the benefits of the Ordinance and the Act.

5. Under existing laws, regulations, published rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Notes (including any original issue discount properly allocable to owners of the Notes) is excludable from gross income of the holders thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”) and is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. Ownership of tax-exempt obligations, including the Notes, may result in collateral federal income tax consequences to certain taxpayers, including without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations.

The Issuer has designated the Notes as “Qualified Tax-Exempt Obligations” for purposes of paragraph (3) of Section 265(b) of the Code and covenanted that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income taxes (excluding, however, obligations described in Section 265(b)(3)(C)(ii) of the Code), including the Notes, have been or shall be issued by the Issuer or any entities subordinate to it, during the calendar year 2015, all as determined in accordance with the Code. We offer no opinion as to such collateral tax consequences or any other federal tax consequences arising with respect to the Notes. Prospective purchasers of the Notes should consult their own tax advisors as to such consequences.

The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code that must be satisfied subsequent to issuance of the Notes for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and with all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Notes set forth in the Ordinance, Note Purchase Agreement, the Tax Certificate and the certifications of the Issuer and others. Failure to comply with such Code provisions or such certifications, covenants and representations could cause the interest on the Notes to be includable in gross income retroactive to the date of issuance of the Notes.

6. Under the Act, the Notes and the interest thereon are exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

7. The Notes are exempted securities within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended, and the West Virginia Uniform Securities Act, as amended, and it is not necessary, in connection with the public offering and sale of the Notes, to register any securities under said Securities Acts.

It is to be understood that the rights of the holders of the Notes and the enforceability of the Notes, the Ordinance, the Note Purchase Agreement, the Continuing Disclosure Agreement, the Tax Certificate, and the liens, pledges, rights or remedies with respect thereto, are subject to and may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws heretofore or hereafter enacted affecting creditors' rights or remedies generally and that their enforcement may also be subject to the application of public policy, general principles of equity and the exercise of judicial discretion in appropriate cases.

We do not express any opinion as to the sufficiency or accuracy of the material, information or financial statements which are set forth in the official statement prepared and used in connection with the offering and sale of the Notes.

We have examined the executed and authenticated Notes of said issue, and in our opinion, said Notes are in proper form and have been duly executed and authenticated.

Very truly yours,

A handwritten signature in black ink that reads "Tad Kelly PLLC". The signature is written in a cursive, flowing style.



JAMESMARK BUILDING  
901 QUARRIER STREET  
CHARLESTON, WV 25301

600 NEVILLE STREET  
SUITE 201  
BECKLEY, WV 25801

2414 CRANBERRY SQUARE  
MORGANTOWN, WV 26508

261 AIKENS CENTER  
SUITE 301  
MARTINSBURG, WV 25404

PHONE: (304) 344-0100  
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PHONE: (304) 254-9300  
FAX: (304) 255-5519

PHONE: (304) 225-2200  
FAX: (304) 225-2214

PHONE: (304) 260-1200  
FAX: (304) 260-1208

**REPLY TO: Charleston**

**SENDERS E-MAIL: [jbrown@pffwv.com](mailto:jbrown@pffwv.com)  
[www.pffwv.com](http://www.pffwv.com)**

December 2, 2015

West Virginia Water Development Authority  
1009 Bullitt Street  
Charleston, WV 25301

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

**RE: City of Nitro Sewerage System Revenue Bonds, Series 2015 A  
(West Virginia CWSRF Program)**

Ladies and Gentlemen:

I am counsel to the City of Nitro, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Jackson Kelly PLLC as bond counsel, a Bond and Note Ordinance duly adopted by the Issuer on October 20, 2015, effective November 17, 2015, as supplemented by a Supplemental Resolution duly adopted by the Issuer on November 17, 2015 (collectively, the "Ordinance"), a Petition of the Sanitary Board duly adopted August 11, 2015, the Bond Purchase Agreement for the Bonds dated December 3, 2015, by and between the Issuer and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Clean Water State Revolving Fund ("CWSRF") and other documents relating to the above captioned Bonds of the Issuer (the "Bonds"). All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance when used herein.

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

1. The Issuer is a duly created and validly existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to undertake and proceed with the Project, to operate and maintain the System, to enact the Ordinance, execute the Bond Purchase Agreement and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Mayor, City Recorder and members of the council of the Issuer have been duly and properly elected, have taken the requisite oaths, and are authorized to act on behalf of the Issuer in their respective capacities.

3. 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.

4. The Bond Purchase Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding agreement of the Issuer enforceable in accordance with its terms.

5. The execution and delivery of the Bonds and the consummation of the transactions contemplated by the Bonds and the Ordinance and 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, order, resolution, agreement or other instrument to which the Issuer is a party or by which the Issuer or its properties are subject or bound or any existing law, regulation, court order or consent decree to which the Issuer is subject.

6. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Ordinance, the undertaking of the Project, the operation of the System, the validity of the Bonds, the collection or pledge of the Surplus Revenues therefor or the pledge of proceeds of any revenue bonds, refunding bonds or other obligations of the Issuer to the payment of the Bonds.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

A handwritten signature in black ink, appearing to read "Johnnie E. Brown". The signature is stylized and cursive, with a large initial "J" and "E".

Johnnie E. Brown  
City Attorney



PULLIN, FOWLER  
FLANAGAN,  
& BROWN & POE PLLC

ATTORNEYS AT LAW

JAMESMARK BUILDING  
901 QUARRIER STREET  
CHARLESTON, WV 25301

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261 AIKENS CENTER  
SUITE 301  
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PHONE: (304) 260-1200  
FAX: (304) 260-1208

**REPLY TO: Charleston**

**SENDERS E-MAIL: [jbrown@pffwv.com](mailto:jbrown@pffwv.com)**

**[www.pffwv.com](http://www.pffwv.com)**

December 2, 2015

City of Nitro  
Nitro, West Virginia

The Huntington National Bank  
Cincinnati, Ohio

Crews & Associates, Inc.  
Charleston, West Virginia

**RE: City of Nitro Sewerage System Bond Anticipation Notes, Series 2015**

Ladies and Gentlemen:

I have acted as counsel for the City of Nitro (the "Issuer") and have acted as such in connection with the sale of the above-referenced Notes (the "Notes"), which are being delivered and sold pursuant to a Note Purchase Agreement dated November 24, 2015 (the "Purchase Agreement"), between Crews & Associates Inc. (the "Underwriter") and the Issuer. Any capitalized term used herein and not defined shall have the meaning assigned to it in the Purchase Agreement.

In this connection, I have reviewed and examined certain proceedings and documents with respect to the Notes, any such records, certificates and other documents as I have considered necessary or appropriate for the purposes of this opinion, the Constitution and the laws of the State of West Virginia, specifically Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), the Bond and Note Ordinance of the Issuer relating to the Notes enacted by the City Council on October 20, 2015, effective November 17, 2015, as supplemented by a Supplemental Parameters Resolution adopted by the City Council on November 17, 2015 (collectively, the "Ordinance"), the Notes Trust Indenture dated December 3, 2015, (the "Indenture"), the Continuing Disclosure Agreement (the "Undertaking"), the Purchase Agreement, the Preliminary Official Statement, dated November 19, 2015, and the Official Statement dated November 24, 2015, with respect to the issuance and offering of the Notes (collectively, the "Official Statement"), and a closing certificate of the Issuer. Based on such review and such other considerations of law and fact as I believe to be relevant, I am of the opinion that:

1. The Issuer is a political subdivision and municipal corporation of the State of West Virginia.

2. The Issuer has complied with all requirements of the Act that must be satisfied in connection with the issuance of the Notes.

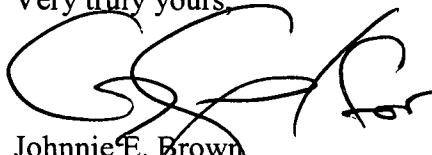
3. No litigation is pending or, to my knowledge, threatened in any court in any way affecting the existence of the Issuer or the titles of its officers to their respective offices, or seeking to restrain or to enjoin the issuance or delivery of the Notes, or, on the issuance and pledge of the proceeds of, the CWSRF Bonds, or the pledge of the Surplus Revenues of the System to pay the interest on the Series 2015 Notes, or in any way contesting or affecting the validity or enforceability of the Notes, the Ordinance or the Purchase Agreement, or contesting the powers of the Issuer with respect to the Notes, the Ordinance, the Undertaking or the Purchase Agreement or any transaction described in or contemplated by the Official Statement.

4. The Official Statement, as amended or supplemented to the date of Closing (except as aforesaid) contains no untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein regarding the Issuer, in light of the circumstances under which they were made, not misleading.

5. The statements contained in the Official Statement under the captions "Purpose and Plan of Financing," "The Series 2015 Notes," "Security for the Series 2015 Notes," "The System and the Utility Board," "Litigation," and "Appendix B" insofar as such statements contained under such captions purport to summarize certain matters set forth therein and certain provisions of the Ordinance, are accurate and present a fair summary of the matters referred to therein.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,



Johnnie E. Brown  
City Attorney



**JACKSON KELLY**

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ATTORNEYS AT LAW, PLLC  
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4.4

December 3, 2015

City of Nitro  
Nitro, West Virginia

West Virginia Department of Environmental Protection  
Charleston, West Virginia

Jackson Kelly PLLC  
Charleston, West Virginia

Re: City of Nitro Sewerage System Revenue Bonds, Series 2015 A (West Virginia CWSRF Program) and Sewerage System Bond Anticipation Notes, Series 2015

Ladies and Gentlemen:

We are special counsel to the City of Nitro (the "Issuer") in connection with certain matters before the Public Service Commission of West Virginia (the "PSC"). As such counsel, we are of the opinion that the Issuer has received the PSC order which became final on November 6, 2014, in Case No. 14-0689-S-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the rates for the System and the financing for the Project. The time for appeal has expired prior to the date hereof without any appeal having been filed. The Order is in full force and effect.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,





November 20, 2015

City of Nitro  
Nitro, West Virginia

West Virginia Department of Environmental Protection  
Charleston, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Jackson Kelly PLLC  
Charleston, West Virginia

Re: Final Title Opinion for City of Nitro

Ladies and Gentlemen:

We are counsel to the City of Nitro (the “Issuer”) in connection with a proposed project to construct certain extensions, additions, betterments and improvements consisting of an extension of wastewater collection and treatment facilities to the existing public sewer facilities of the City (the “System”), including but not limited to a sewer extension to serve approximately 94 new customers in the Blakes Creek and Eastwood Acres areas; upgrades to and replacements of portions of the System; installation of telemetry at eight major pump stations; installation of storm sewers in the Pump Station No. 7 drainage area; replacement of the wastewater treatment plant belt filter press; and certain emergency repairs to the System, specifically replacement of the force main for Pump Station 8 (collectively the “Project”). We 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. We are 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 and through its duly established sewer board, the Nitro Regional Wastewater Utility (the “Sewer Board”), has the full power and authority 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.

City of Nitro  
West Virginia Department of Environmental Protection  
West Virginia Water Development Authority  
Jackson Kelly PLLC  
November 20, 2015

7. Sewer lines to be constructed by the Issuer as part of the Project will cross existing natural gas pipelines at three locations. Agreements setting forth the terms on which these pipeline crossing will be authorized have been obtained from the owners/operators of the natural gas pipelines and have been executed by the Issuer.

JACKSON KELLY PLLC

By: Michelle Elmore Wooten  
Michelle Elmore Wooton, Member  
State Bar No. 9654  
1600 Laidley Tower  
500 Lee Street, East  
Charleston, WV 25301



JACKSONKELLY<sup>SM</sup>

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December 3, 2015

City of Nitro  
Sewerage System Revenue Bonds, Series 2015 A  
(West Virginia CWSRF Fund)

City of Nitro  
Nitro, West Virginia

West Virginia Department of Environmental Protection  
Charleston, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Ladies and Gentlemen:

We are counsel to the City of Nitro (the "Issuer") Regional Wastewater Utility (the "Utility Board"), in Putnam and Kanawha Counties, West Virginia. As such counsel, we have examined copies of the approving opinions of Jackson Kelly PLLC, as bond counsel, a Bond Purchase Agreement for the Series 2015 A Bonds dated December, 2015, including all schedules and exhibits attached thereto, by and between the Issuer and the West Virginia Water Development Authority (the "Authority") on behalf of the Clean Water State Revolving Fund (the "CWSRF") (the "Bond Purchase Agreement"), the Bond and Notes Ordinance duly enacted by the Issuer on October 20, 2015, as supplemented by the Supplemental Resolution duly adopted by the Issuer on November 17, 2013 (collectively, the "Bond Ordinance"), a Petition of the Utility Board of the Issuer, and other documents relating to the above-referenced Bonds (collectively, the "Bonds"). Capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance and the Bond Purchase Agreement when used herein.

We are of the opinion that:

1. The Issuer has been duly created and is validly existing as a municipal Utility and the members of the Utility Board have been duly and properly appointed, have taken the requisite oaths, and are authorized to act on behalf of the Issuer.

2. The execution and delivery of the Bonds and the Bond Purchase Agreement and the consummation of the transactions contemplated by the Bonds, Bond Purchase Agreement and the Bond Ordinance and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach of or default under any ordinance, order, resolution, agreement or other 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.

3. The Utility Board on behalf of the Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for use of the System, including, without limitation, the receipt of all requisite orders and approvals from the West Virginia Department of Environmental Protection and the Public Service Commission of West Virginia, and has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges, including, without limitation, the enactment of an ordinance dated November 17, 2013. Such rates are currently in full force and effect.

4. The Issuer has received all orders and approvals from the Public Service Commission of West Virginia, through a Recommended Decision dated October 17, 2014 that became a Final Commission Order on November 6, 2014 in Case No. 14-0689-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 Order remains in full force and effect.

5. To the best of our 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 Bond Purchase Agreement, the Bond Ordinance, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds or the collection or pledge of the Net Revenues therefore.

6. We have ascertained that all successful bidders have provided the drug-free workplace affidavit, submitted their drug free workplace plan, and the contracts contain language that complies with the Drug Free Workplace Act, Article 1D, Chapter 21 of the West Virginia Code. We have verified that all successful bidders have made the required provisions for all insurance and payment and performance bonds and we have verified such insurance policies and bonds for accuracy. We have reviewed the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, and verified 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 interests of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Bond Ordinance

City of Nitro  
West Virginia Department of Environmental Protection  
West Virginia Water Development Authority  
December 3, 2015  
Page 3

and the Bond Purchase 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,

A handwritten signature in cursive script, appearing to read "Jack Kelly".



**JACKSON KELLY**  
ATTORNEYS AT LAW, PLLC

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## SUPPLEMENTAL BOND COUNSEL OPINION

December 3, 2015

City of Nitro  
Nitro, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Crews & Associates, Inc.  
Charleston, West Virginia

Re: City of Nitro (West Virginia) Sewerage System Bond Anticipation Notes,  
Series 2015

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance and sale by the City of Nitro (the "Issuer") of its \$6,735,000 aggregate principal amount of Sewerage System Bond Anticipation Notes, Series 2015 (the "Notes"): In our capacity as Bond Counsel, we are delivering an opinion of even date herewith concerning the legality of the Notes and the exclusion of interest on the Notes from gross income for federal income tax purposes (the "Bond Opinion"). We have examined the documents and instruments as described in the Bond Opinion, the Official Statement and such other matters as we have deemed necessary or appropriate to render this opinion. Words and terms used in this opinion shall have the meanings assigned to them in the Note Purchase Agreement (the "Purchase Agreement") dated November 24, 2015, between the Issuer and Crews & Associates, Inc. (the "Underwriter"), and approved by the Issuer.

Based upon the foregoing, we are of the opinion that:

1. The Purchase Agreement has been duly authorized, executed and delivered by, and (assuming due authorization, execution and delivery by the other parties and that it is a binding agreement of the other parties in accordance with its terms) constitutes a binding agreement in accordance with its terms of, the Issuer.
2. The Notes are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Ordinance is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

3. The statements contained in the Official Statement under the caption “Tax Matters” are true and accurate in all material respects and present a fair and accurate summary and description of the matters summarized and described under such caption.

4. Nothing has come to our attention which would lead us to believe that the statements contained in the Official Statement under the captions “Security for the Series 2015 Notes,” “The Series 2015 Notes” (except for the statements referred to therein under “Book-Entry Only System” with respect to The Depository Trust Company), “Purpose and Plan of Financing,” “Appendix E – Proposed Form of Bond Counsel Opinion,” and “Appendix F – Form of Ordinance and Notes Supplemental Resolution” insofar as such statements contained under such captions purport to summarize certain matters set forth therein and certain provisions of the Ordinance, do not present fairly in all material respects the matters referred to therein.

Very truly yours,





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Writer's Contact Information

December 3, 2015

Crews & Associates, Inc.  
Charleston, West Virginia

Re: City of Nitro  
Sewerage System Bond Anticipation Notes, Series 2015

Ladies and Gentlemen:

This letter is being delivered to you pursuant to the Note Purchase Agreement dated November 24, 2015 (the "Agreement"), between Crews & Associates, Inc. (the "Underwriter") and the City of Nitro (the "City") relating to the sale of the above-referenced Notes. The terms defined in the Agreement are used in this opinion with the meanings assigned to them in the Agreement.

We have acted as your counsel in connection with the issuance and sale of the Notes to you, and in that capacity have examined an executed counterpart of the Agreement. We have also examined an executed copy of a Continuing Disclosure Agreement with respect to the Notes, by and between the City of Nitro, West Virginia and The Huntington National Bank, as Dissemination Agent, dated December 3, 2015 (the "Continuing Disclosure Agreement") and the originals or copies, certified or otherwise identified to our satisfaction, of such other documents, records and other instruments, as we have deemed necessary or advisable for purposes of this opinion.

In connection with the preparation of the Preliminary Official Statement, dated November 19, 2015, and the Official Statement dated November 24, 2015 (collectively, the "Official Statement"), we have generally reviewed information furnished to us by, and have participated in conferences with, representatives and officials of the City, counsel to the City, your representatives and Jackson Kelly PLLC, Bond Counsel. We have also reviewed other records relating to the authorization, issuance and sale of the Notes and have relied upon certificates of officials of the City, and upon written opinions of counsel to the City.

We have considered the information contained in the Official Statement and, based upon our review and discussions and in reliance upon the accuracy of the information contained in the aforementioned certificates and written opinions, and without having determined independently, or assuming any responsibility for, the accuracy, completeness or fairness of the statements contained in the Official Statement, nothing has come to our attention which leads us to believe that the Official Statement as of its date (except for information relative to the securities depository, the rating agency, and any financial statements, forecasts, financial or statistical data, estimates, assumptions and expressions of opinions, as to which we express no opinion) contains

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any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. We express no opinion as to the financial statements included in Appendix C to the Official Statement.

The Agreement has been duly authorized, executed and delivered by and on behalf of the Underwriter and, assuming due authorization, execution and delivery by the other parties and that it is a binding agreement in accordance with its terms, constitutes a binding agreement of the Underwriter, except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws affecting the respective parties, the exercise of judicial discretion or the availability of equitable remedies.

In addition, we are of the opinion that the Notes are not subject to the registration requirements of the Securities Act of 1933, as amended, and neither the Ordinance with respect to the Notes enacted by the Issuer on October 20, 2015, effective November 17, 2015, as supplemented (the "Issuer Ordinance") nor the Trust Indenture dated as of December 3, 2015 (the "Indenture"), are required to be qualified under the Trust Indenture Act of 1939, as amended.

We are further of the opinion that the Continuing Disclosure Agreement complies as to form in all material respects with the requirements of paragraph b(5) of Rule 15c2-12 under the Securities and Exchange Act of 1934 (the "Rule").

Respectfully submitted,



Steptoe & Johnson, PLLC