

**CITY OF MARTINSBURG  
COMBINED WATERWORKS AND SEWERAGE SYSTEM  
REVENUE BONDS**

**Series 2000A (West Virginia DWTRF Program)  
Series 2000B (West Virginia Infrastructure Fund)  
Series 2000C (West Virginia Water Development Authority)**

**Date of Closing: September 27, 2000**

**CITY OF MARTINSBURG**  
**COMBINED WATERWORKS AND**  
**SEWERAGE SYSTEM REVENUE BONDS,**

**SERIES 2000A**  
**(WEST VIRGINIA DWTRF PROGRAM)**

**SERIES 2000B**  
**(WEST VIRGINIA INFRASTRUCTURE FUND)**

**SERIES 2000C**  
**(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)**

**BOND ORDINANCE**

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**CITY OF MARTINSBURG  
COMBINED WATERWORKS AND SEWERAGE SYSTEM  
REVENUE BONDS,**

**SERIES 2000A  
(WEST VIRGINIA DWTRF PROGRAM)**

**SERIES 2000B  
(WEST VIRGINIA INFRASTRUCTURE FUND)**

**SERIES 2000C  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)**

**BOND ORDINANCE**

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF MARTINSBURG AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF MARTINSBURG OF NOT MORE THAN TWELVE MILLION FIVE HUNDRED FORTY THOUSAND THREE HUNDRED FIFTY-TWO DOLLARS (\$12,540,352) IN AGGREGATE PRINCIPAL AMOUNT OF CITY OF MARTINSBURG COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS IN THREE SERIES, THE FIRST SERIES TO BE DESIGNATED SERIES 2000A (WEST VIRGINIA DWTRF PROGRAM) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED SEVEN MILLION FIVE HUNDRED SIXTY-FOUR THOUSAND DOLLARS (\$7,564,000), THE SECOND SERIES TO BE DESIGNATED SERIES 2000B (WEST VIRGINIA INFRASTRUCTURE FUND) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED THREE MILLION DOLLARS (\$3,000,000), AND THE THIRD SERIES TO BE DESIGNATED SERIES 2000C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED ONE MILLION NINE HUNDRED SEVENTY-SIX THOUSAND THREE HUNDRED FIFTY-TWO DOLLARS (\$1,976,352); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF THE RESPECTIVE SERIES OF SUCH COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS; APPROVING, RATIFYING AND CONFIRMING (I) A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY ACTING ON BEHALF OF THE WEST VIRGINIA BUREAU FOR PUBLIC HEALTH RELATING TO SUCH SERIES 2000A BONDS, (II) A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY ACTING

ON BEHALF OF THE WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL RELATING TO SUCH SERIES 2000B BONDS, AND (III) A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY RELATING TO SUCH SERIES 2000C BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ENACTED AND ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MARTINSBURG:

## ARTICLE I

### STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any order, ordinance or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 8, Article 20, Chapter 16, Article 13C, Chapter 31, Article 15A and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act") and other applicable provisions of law.

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

A. City of Martinsburg (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Berkeley County of said State.

B. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be constructed certain additions, betterments and improvements to the Issuer's existing public combined waterworks and sewerage system, including the additions, betterments and improvements described in Exhibit A hereto (collectively, the "Project") (the Issuer's existing public combined waterworks and sewerage system, the Project and any further additions thereto or extensions thereof are herein called the "System") in accordance with the plans and specifications prepared by Chester Engineers, Inc., the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The acquisition and construction of the System were financed and refinanced by issuance of several series of bonds or refunding bonds, of which there are presently Outstanding the Issuer's Combined Waterworks and Sewerage System Refunding Revenue Bonds, Series 1995, dated September 1, 1995, originally issued in the aggregate principal amount of \$3,645,000 of which \$3,300,000 is presently Outstanding (the "Prior Bonds"), which Prior Bonds were issued pursuant to an ordinance enacted by the Issuer on August 17, 1995 and put into effect following a public hearing held on August 31, 1995 (the "Prior Ordinance").

D. The Issuer 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.

E. The estimated maximum cost of the construction and acquisition of the Project and issuance of the Series 2000 Bonds, as hereinafter defined, is \$13,056,020, of which not to exceed \$7,564,000 will be permanently financed with the proceeds of the Issuer's Combined Waterworks and Sewerage System Revenue Bonds, Series 2000A (West Virginia DWTRF Program) (the "Series 2000A Bonds"), not to exceed \$3,000,000 will be permanently financed with the proceeds of the

Issuer's Combined Waterworks and Sewerage System Revenue Bonds, Series 2000B (West Virginia Infrastructure Fund) (the "Series 2000B Bonds"), not to exceed \$1,976,352 will be permanently financed with the proceeds of the Issuer's Combined Waterworks and Sewerage System Revenue Bonds, Series 2000C (West Virginia Water Development Authority) (the "2000C Bonds" and collectively with the Series 2000A Bonds and Series 2000B Bonds, the "Series 2000 Bonds") herein authorized and the balance of \$515,668 will be paid with other available funds of the Issuer, which sum of \$515,668 is to be reimbursed to the Issuer from the proceeds of the Bonds of the Issuer to be issued in connection with Phase II of the project which will be undertaken by the Issuer to extend and improve the water treatment and distribution facilities of the System, which is to be undertaken for financing purposes in two phases, the Project hereunder consisting of Phase I thereof.

F. The Issuer has met all of the requirements set forth in the Prior Ordinance, including without limitation the provisions of Section 6.08 thereof, for the issuance of the Series 2000 Bonds on a parity with the Prior Bonds with respect to lien, pledge and sources of and security for payment, and the Issuer has determined that, upon issuance the Series 2000 Bonds shall be on a parity with the Prior Bonds.

G. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Series 2000 Bonds and the Prior Bonds, and all sinking funds, reserve accounts and other payments provided for herein and in the Prior Ordinance.

H. It is further deemed necessary for the Issuer to issue the Series 2000A Bonds, in the total aggregate principal amount of not more than \$7,564,000, the Series 2000B Bonds in the total aggregate principal amount of not more than \$3,000,000 and the Series 2000C Bonds in the total aggregate principal amount of not more than \$1,976,352, to permanently finance a portion of the costs of acquisition and construction of the Project, as hereinafter defined. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Series 2000 Bonds prior to and during construction and acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Series 2000 Bonds Reserve Accounts; engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2000 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2000

Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project, as hereinafter defined.

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

J. It is in the best interest of the Issuer that its Series 2000A Bonds be issued and sold to the Authority (as hereinafter defined) pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, acting on behalf of the West Virginia Bureau for Public Health ("BPH"), the execution, delivery and form of which are ratified and approved herein.

K. It is in the best interests of the Issuer that its Series 2000B Bonds be issued and sold to the Authority (as hereinafter defined) pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, acting on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), the execution, delivery and form of which are ratified and approved herein.

L. It is in the best interests of the Issuer that its Series 2000C Bonds be issued and sold to the Authority (as hereinafter defined) pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, the execution, delivery and form of which are ratified and approved herein.

M. There are no outstanding obligations of the Issuer, other than the Prior Bonds, which will rank either senior and prior to or on parity with the Series 2000 Bonds as to liens and sources of and security for payment.

N. The Series 2000 Bonds shall be issued with a lien on the Gross Revenues, as hereinafter defined, on a parity with the lien held by the Holders of the Prior Bonds. Prior to the issuance of the Series 2000 Bonds, the Issuer will obtain a certificate of an Independent Certified Public Accountant stating that the parity test of the Prior Bonds is met.

O. The Issuer has complied with all requirements of West Virginia law and the Loan Agreements relating to authorization of the acquisition, construction and operation of the Project and the System, and issuance of the Series 2000 Bonds or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of a Certificate of Public Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which has expired prior to the issuance of the Series 2000 Bonds or has been waived by all necessary parties.

P. The Project has been reviewed and determined to be technically and financially feasible by the Council (as hereinafter defined) as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

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

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

“Act” means collectively Chapter 8, Article 20, Chapter 16, Article 13C, Chapter 31, Article 15A and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

“Authority” means the West Virginia Water Development Authority, or any other agency of the State of West Virginia that succeeds to the functions of the Authority, which is expected to be the original purchaser and Registered Owner of the Series 2000A Bonds, Series 2000B Bonds and the Series 2000C Bonds, provided that the Issuer must satisfy the legal and other requirements of the respective loan programs.

“Authorized Officer” means the Mayor or City Manager of the Issuer or any other officer of the Issuer specifically designated by resolution of the Council of the Issuer duly appointed as such by the Governing Body.

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

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

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

“Bonds” means, collectively, the Prior Bonds, the Series 2000 Bonds and, where appropriate, any Bonds on a parity therewith authorized to be issued hereunder or by another ordinance of the Issuer.

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

“BPH” means the West Virginia Bureau for Public Health, a division of the West Virginia Department of Health and Human Resources, or any successor thereto.

“Certificate of Authentication and Registration” means the certificate of authentication and registration on the Series 2000 Bonds in substantially the forms set forth in the bond forms contained herein.

“City Manager” means the City Manager of the Issuer.

“Closing Date” means the date upon which there is an exchange of the Series 2000 Bonds for an advance of more than a de minimis amount of the principal of the Series 2000 Bonds by the Authority.

“Code” shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations thereunder.

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

“Completion Date” means the completion date of the Project.

“Construction Trust Funds” means the Series 2000A Bonds Construction Trust Fund, the Series 2000B Bonds Construction Trust Fund and the Series 2000C Bonds Construction Trust Fund.

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

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

“Council” means the West Virginia Infrastructure and Jobs Development Council or any successor thereto.

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

“Depreciation Fund” means the Depreciation Fund established or continued by the Prior Ordinance and continued by Section 5.01 hereof.

“DWTRF Administrative Fee” means the administrative fee payable pursuant to the DWTRF Loan Agreement.

“DWTRF Loan Agreement” shall mean the Drinking Water Treatment Revolving Fund Loan Agreement entered into or to be entered into by and between the Issuer and the Authority on behalf of the BPH, providing for the purchase of the Series 2000A Bonds from the Issuer by the Authority, attached hereto as Exhibit B, the form of which is approved, and the execution and delivery by the Issuer are authorized and directed by Section 3.11 hereof and by the Supplemental Resolution.

“DWTRF Program” means the drinking water facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Safe Drinking Water Act and administered by BPH.

“DWTRF Regulations” means the regulations set forth in the West Virginia Code of State Regulations relating to the DWTRF Program.

“Event of Default” means any occurrence or event specified in Section 9.01.

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

“Financial Guaranty Agreement” means the Financial Guaranty Agreement by and between the Issuer and MBIA, dated as of the closing date with respect to the Prior Bonds or any similar agreement which may be entered into between the Issuer and a provider of a Reserve Account Insurance Policy for a subsequent series of Bonds.

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

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

“Government Obligations” means direct and general obligations of the United States of America, of obligations that are unconditionally guaranteed as to principal and interest by the United States of America, including (in the case of direct and general obligations of the United States of America) evidences of ownership of proportionate interests in future interest and principal payments of such obligations; provided that, investments in such proportionate interests shall be limited to circumstances wherein (a) a bank or trust company acts as custodian and holds the underlying United States obligations; (b) the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor of the underlying United States obligations; and (c) the underlying United States obligations are held in a special account separate from the custodian’s general assets, and are not available to satisfy any claim of the custodian, any person claiming through the custodian, or any person to whom the custodian may be obligated.

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

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

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

“Infrastructure Loan Agreement” means the Loan Agreement between the Issuer and Authority, acting on behalf of the Council, providing for the purchase of the Series 2000B Bonds from the Issuer by the Authority, attached hereto as Exhibit B, the form of which is approved, and the execution and delivery by the Issuer are authorized and directed by Section 3.11 hereof and by the Supplemental Resolution.

“Investment Property” means any security (as said term is defined in Section 165(g)(2) (A) or (B) of the Code), obligation, annuity contract, investment-type property or in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan. Except as provided in the following sentence, the term “Investment Property” does not include any tax-exempt bond. With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in Section 57(a)(5)(C) of the Code), the term “Investment Property” includes a specified private activity bond (as so defined).

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

“Loan Agreements” means collectively the DWTRF Loan Agreement, the Infrastructure Loan Agreement and the WDA Loan Agreement.

“Mayor” means the Mayor of the Issuer.

“MBIA” means Municipal Bond Investors Assurance Corporation, a stock insurance company incorporated under the laws of the State of New York.

“Municipal Bond Insurance Policy” means the municipal bond insurance policy issued by MBIA simultaneously with the delivery of the Prior Bonds, insuring the payment of the principal of and interest on all or any of the Prior Bonds in accordance with the terms thereof or any other bond insurance policy which may be issued on behalf of the Issuer to insure payment of the principal of and interest on all or any subsequent series of Bonds.

“Net Proceeds” means the face amount of the Series 2000 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 2000 Bonds Reserve Accounts. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2000 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

“Net Revenues” means Gross Revenues less Operating Expenses.

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

“Operating Expenses” means the current expenses, paid or accrued, of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the costs of any project relating to the acquisition or construction of additions, betterments or improvements of the System), supplies, labor, wages, the cost of materials and supplies used for current operations, fees and expenses of fiscal agents and of the Depository Bank, Registrar and Paying Agent or Paying Agents, payments to pensions or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that “Operating Expenses” does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from sale or other disposition of or any decrease in the value

of capital assets, amortization of debt discount or such miscellaneous deductions are reapplicable to prior accounting periods.

“Operation and Maintenance Fund” means the Operation and Maintenance Fund established or continued by the Prior Ordinance and continued by Section 5.01 hereof.

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

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

“Paying Agent” means the West Virginia Municipal Bond Commission, or such entity or authority as may be designated by the Issuer with the consent of the Authority.

“Prior Bonds” means the Issuer’s Combined Waterworks and Sewerage System Refunding Revenue Bonds, Series 1995, dated September 1, 1995, originally issued in the aggregate principal amount of \$3,645,000, of which \$3,300,000 is presently Outstanding.

“Prior Ordinance” means the Bond Ordinance enacted by the Issuer on August 17, 1995 and put into effect on August 31, 1995, authorizing, among other things, the issuance of the Prior Bonds, as supplemented and amended.

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

“Project” means the project described in Exhibit A attached hereto, constituting additions, betterments and improvements to the existing combined waterworks and sewerage system of the Issuer.

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

- (1) Government Obligations.

(2) Obligations issued or guaranteed by the following instrumentalities or agencies of the United States of America:

- (a) Federal Home Loan Bank System,
- (b) Export-Import Bank of the United States.
- (c) Federal Financing Bank,
- (d) Government National Mortgage Association,
- (e) Farmers Home Administration,
- (f) Federal Home Loan Mortgage Company,
- (g) Federal Housing Administration, and
- (h) Federal National Mortgage Association.

(3) Direct and general long-term obligations of any state to the payment of which the full faith and credit of the state is pledged and which are rated in either of the two highest rating categories by either Moody's Investors Service, Inc. (hereinafter referred as "Moody's") or Standard and Poor's Corporation (hereinafter referred to as "S&P") or, in the event each of such rating agencies rate such obligations, by each of them.

(4) Direct and general short term obligations of any state described in (3) above which are rated in the highest rating category by either Moody's or S&P or, in the event each of such rating agencies rate such obligations, by each of them.

(5) Interest-bearing demand or time deposits or interests in money-market portfolios issued by state banks or trust companies or any national banking associations which are members of the Federal Deposit Insurance Corporation ("FDIC") or savings and loan associations which are members of the Federal Savings and Loan Insurance Corporation ("FSLIC"). These deposits or interests shall be (a) continuously and fully secured by the FDIC and FSLIC and with banks that are rated at least P-1 or Aa by Moody's or at least A-1 or AA by S&P, or (b) fully secured by Government Obligations. Such Government Obligations must have a market value at all times at least equal to the principal amounts of the deposits or interests. The Government Obligations must be held by the Depository Bank (who shall not be the provider of the collateral) or by any Federal Reserve Bank or depository, as custodian for the institution issuing the deposits or interests. The Depository Bank

shall have a perfected first lien in the Government Obligations serving as collateral and such collateral shall be free from all third party liens.

(6) Repurchase agreements, the maturity of which are 30 days or less, entered into with financial institutions such as banks or trust companies organized under state law or national banking associations, insurance companies, or government bond dealers reporting to, trading with, and recognized as primary dealers by the Federal Reserve Bank of New York or banks rated "A" or above by S&P and Moody's. Such repurchase agreements shall be secured by Government Obligations. The Government Obligations must have a fair market value, exclusive of accrued interest, at least equal to the amount invested in the repurchase agreements. The Depository Bank (who shall not be the provider of the collateral) must have a perfected first lien in, and retain possession of, the collateral and the collateral must be free from all third party claims. The collateral must be valued weekly, marked-to-market at current market price, plus accrued interest and the value thereof must be equal at least 102% of the amount of cash transferred by the City to the dealer bank or securities firm under such repurchase agreement, plus accrued interest. If the value of the collateral falls below 102% of the value of such cash transferred by the City, additional cash and/or acceptable securities shall be transferred.

(7) Public housing bonds issued by public agencies. Such bonds must be fully secured by a pledge of annual contributions under a contract with the United States government; temporary notes, preliminary loan notes or project notes secured by a requisition or payment agreement with the United States; or state or public agency or municipality obligations rated in the highest rating category by a nationally recognized bond rating agency.

(8) Shares of a diversified open-end management investment company (as defined in the Investment Company Act of 1940) or shares in a regulated investment company (as defined in Section 851(a) of the Internal Revenue Code of 1986, as amended) that is (a) a money market fund that has been rated in the highest rating category by Moody's or S&P or (b) money market accounts of the Depository Bank or any state or federal bank that is rated at least P-1 or Aa by Moody's or at least A-1 or AA by S&P or whose one bank holding company parent is rated at least A-1 or AA By S&P or at least P-1 or Aa by Moody's or that has a combined capital and surplus of not less than \$50,000,000.

(9) State pooled investment funds approved by MBIA (so long as MBIA insures any outstanding Bonds) including the West Virginia "consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended.

“Recorder” means the Recorder, City Clerk, or City Administrator of the Issuer.

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

“Registrar” means the Bond Registrar.

“Regulations” means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954, as amended.

“Reserve Accounts” means, collectively, the Series 1995 Bonds Reserve Account and the Series 2000 Bonds Reserve Accounts.

“Reserve Account Insurance Policy” means the reserve account insurance policy issued by MBIA simultaneously with the delivery of the Prior Bonds, insuring the funding requirement of the Series 1995 Bonds Reserve Account in connection with the Prior Bonds in accordance with the terms thereof or any surety bond, letter of credit or other instrument which may be applied by the Issuer to satisfy all or any portion of the Reserve Requirement for a subsequent series of Bonds, provided however that no such surety bond or letter of credit shall be used to fund all or any portion of the Reserve Requirement for a subsequent series of parity Bonds without the prior written consent of MBIA both as to the provider for such security and to its structure.

“Reserve Requirement” means, collectively, the respective amount required to be on deposit in the Reserve Accounts for the Series 2000 Bonds and Prior Bonds.

“Revenue Fund” means the Revenue Fund established or continued by the Prior Ordinance and continued by Section 5.01 hereof.

“Series 1995 Bonds Redemption Account” means the Redemption Account established for the Prior Bonds in the Prior Ordinance.

“Series 1995 Bonds Reserve Account” means the Reserve Account established for the Prior Bonds in the Prior Ordinance.

“Series 1995 Bonds Sinking Fund” means the Sinking Fund established for the Prior Bonds in the Prior Ordinance.

“Series 2000 Bonds” means collectively the Series 2000A Bonds, the Series 2000B Bonds and the Series 2000C Bonds.

“Series 2000 Bonds Reserve Accounts” means collectively the Series 2000A Bonds Reserve Account, the Series 2000B Bonds Reserve Account and the Series 2000C Bonds Reserve Account.

“Series 2000 Bonds Sinking Funds” means collectively the Series 2000A Bonds Sinking Fund, the Series 2000B Bonds Sinking Fund and the Series 2000C Bonds Sinking Fund.

“Series 2000A Bonds” means the not more than \$7,564,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 2000A (West Virginia DWTRF Program) of the Issuer, authorized by this Ordinance.

“Series 2000A Bonds Construction Trust Fund” means the Series 2000A Bonds Construction Trust Fund established by Section 5.01 hereof.

“Series 2000A Bonds Reserve Account” means the Series 2000A Bonds Reserve Account established in the Series 2000 Bonds Sinking Fund pursuant to Section 5.02 hereof.

“Series 2000A Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2000A Bonds in the then concurrent or any succeeding year.

“Series 2000A Bonds Sinking Fund” means the Series 2000A Bonds Sinking Fund established by Section 5.02 hereof.

“Series 2000B Bonds” means the not more than \$3,000,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 2000B (West Virginia Infrastructure Fund) of the Issuer, authorized by this Ordinance.

“Series 2000B Bonds Construction Trust Fund” means the Series 2000B Bonds Construction Trust Fund established by Section 5.01 hereof.

“Series 2000B Bonds Reserve Account” means the Series 2000B Bonds Reserve Account established in the Series 2000 Bonds Sinking Fund pursuant to Section 5.02 hereof.

“Series 2000B Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2000B Bonds in the then concurrent or any succeeding year.

“Series 2000B Bonds Sinking Fund” means the Series 2000B Bonds Sinking Fund established by Section 5.02 hereof.

“Series 2000C Bonds” means the not more than \$1,976,352 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 2000C (West Virginia Water Development Authority) of the Issuer, authorized by this Ordinance.

“Series 2000C Bonds Construction Trust Fund” means the Series 2000C Bonds Construction Trust Fund established by Section 5.01 hereof.

“Series 2000C Bonds Reserve Account” means the Series 2000C Bonds Reserve Account established in the Series 2000 Bonds Sinking Fund pursuant to Section 5.02 hereof.

“Series 2000C Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2000C Bonds in the then concurrent or any succeeding year.

“Series 2000C Bonds Sinking Fund” means the Series 2000C Bonds Sinking Fund established by Section 5.02 hereof.

“Sinking Funds” means, collectively, the Series 1995 Bonds Sinking Fund and the Series 2000 Bonds Sinking Funds.

“State” means the State of West Virginia.

“Supplemental Resolution” means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article “the,” refers specifically to the Supplemental Resolution authorizing the sale of the Series 2000 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2000 Bonds and not so included may be included in another Supplemental Resolution.

“Surplus Revenues” means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Series 2000 Bonds, the Prior Bonds or any other obligations of the Issuer, as further defined in Section 5.03(A)(7) hereof.

“System” means, collectively, the complete existing municipal combined waterworks and sewerage system of the Issuer, consisting of a water filtration and treatment plant, reservoirs, water tanks, distribution lines and booster stations and a sewage treatment plant, collection and transportation lines and lift stations now owned by the Issuer or any integral part thereof, and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a waterworks or sewage treatment and collection system, and any additions, betterments and improvements thereto hereafter acquired or constructed for said waterworks or sewage treatment and collection system from any sources whatsoever, both within and without the Issuer.

“WDA Loan Agreement” means the Loan Agreement between the Authority and the Issuer, providing for the purchase of the Series 2000C Bonds, by the Authority, attached hereto as Exhibit B, the form of which is approved, and the execution and delivery by the Issuer are authorized and directed by Section 3.11 hereof and by the Supplemental Resolution.

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

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 generally accepted accounting principles.

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

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Ordinance; and the term “hereafter” means after the date of 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 ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized the acquisition and construction of the Project, at an estimated cost of not to exceed \$13,056,020, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2000 Bonds hereby authorized shall be applied as provided in Article VI hereof.

The Issuer has received bids or entered into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the BPH, the Council and the Authority. The Issuer will enter into a contract for the acquisition and construction of the Project simultaneously with the issuance of the Series 2000 Bonds or within thirty (30) days thereafter.

The cost of the Project is estimated not to exceed \$13,056,020, which is to be paid as set forth in 1.02E hereof.

### ARTICLE III

#### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENTS

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2000 Bonds, funding reserve accounts for the respective Series 2000 Bonds, paying Costs of the Project not otherwise provided for, and paying certain costs of issuance of the Series 2000 Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 2000 Bonds of the Issuer in an aggregate principal amount of not more than \$12,540,352. The Series 2000 Bonds shall be issued in three series, the first series to be designated "Combined Waterworks and Sewerage System Revenue Bonds, Series 2000A (West Virginia DWTRF Program)," in the aggregate principal amount of not more than \$7,564,000, the second series to be designated "Combined Waterworks and Sewerage System Revenue Bonds, Series 2000B (West Virginia Infrastructure Fund)," in an aggregate principal amount of not more than \$3,000,000, and the third series to be designated "Combined Waterworks and Sewerage System Revenue Bonds, Series 2000C (West Virginia Water Development Authority)," in an aggregate principal amount of not more than \$1,976,352, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2000 Bonds remaining after the funding of the Series 2000 Bonds Reserve Accounts (if funded from the Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the respective Series 2000 Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2000 Bonds shall be issued in such principal amounts; bear interest at such rate or rates, not exceeding the then legal maximum, payable semiannually or quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the respective Loan Agreements. The Series 2000 Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2000 Bonds shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2000A Bonds, Series 2000B Bonds and Series 2000C Bonds shall each be issued in the form of a single bond, fully registered to the Authority, with a debt service schedule attached, and the Series 2000A Bonds and Series 2000B Bonds shall have attached a record of advances, representing the aggregate principal

amount of the Series 2000 Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2000 Bonds shall be exchangeable at the option and expense of the Holder for other fully registered Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. The Bonds shall be dated as of the date specified in a Supplemental Resolution and shall bear interest, if any, as provided in such Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2000 Bonds shall be executed in the name of the Issuer by the Mayor and City Manager, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed any of the Series 2000 Bonds shall cease to be such officer of the Issuer before the Series 2000 Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2000 Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2000 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the forms set forth in Section 3.10 shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2000 Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2000 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting any of said Series 2000 Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bond shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Series 2000 Bonds remain Outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain the books for the registration and transfer of the Series 2000 Bonds.

The registered Series 2000 Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2000 Bonds or transferring the registered Series 2000 Bonds are exercised, Series 2000 Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2000 Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2000 Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 2000 Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2000 Bonds or, in the case of any proposed redemption of Series 2000 Bonds, next preceding the date of the selection of Series 2000 Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2000 Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2000 Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Gross Revenues derived from the operation of the System as herein provided and amounts, if any, in the respective Sinking Funds and Reserve Accounts. No holder or holders of any of the Series 2000 Bonds shall ever have

the right to compel the exercise of the taxing power of the Issuer to pay the Series 2000 Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Gross Revenues, Lien Positions With Respect to Prior Bonds. The payment of the debt service of all the Series 2000 Bonds shall be secured forthwith equally and ratably with each other by a first lien on and pledge of the Gross Revenues derived from the System on a parity with the lien on such Gross Revenues in favor of the Holders of the Prior Bonds. Such Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Prior Bonds and the Series 2000 Bonds and to make the payments into the Sinking Funds and the Reserve Accounts therein, are hereby irrevocably pledged to the payment of the principal of and interest on the Prior Bonds and the Series 2000 Bonds as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2000 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2000 Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Series 2000 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2000 Bonds to the original purchasers;

C. An executed and certified copy of the Bond Legislation;

D. An executed copy of the DWTRF Loan Agreement, Infrastructure Loan Agreement and WDA Loan Agreement; and

E. The approving opinions of bond counsel on the Series 2000 Bonds.

Section 3.10. Forms of Series 2000 Bonds. The text of the Series 2000 Bonds shall be in substantially the following respective forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[Form of Series 2000A Bond]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF MARTINSBURG  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2000A  
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-\_\_\_\_\_

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

KNOW ALL MEN BY THESE PRESENTS: That CITY OF MARTINSBURG, a municipal corporation and political subdivision of the State of West Virginia in Berkeley County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as Exhibit A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing on \_\_\_\_\_, \_\_\_\_\_, as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit B.

The interest and DWTRF Administrative Fee (as defined in the hereinafter described Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_, 20\_\_\_\_, as set forth on Exhibit B attached hereto. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest and DWTRF Administrative Fee on this Bond are payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Bond Legislation) on the 15th day of the month next preceding an interest and DWTRF Administrative Fee payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may only 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 Bureau for Public Health ("BPH") and upon the terms and conditions prescribed by, and otherwise in compliance with, the Drinking Water Treatment Revolving Fund Loan Agreement between the Issuer and the Authority, acting on behalf of the BPH, dated \_\_\_\_\_, 20\_\_\_\_.

This Bond is issued (i) to permanently finance a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public combined waterworks and sewerage facilities of the Issuer (the "Project"); (ii) to fund a debt service reserve account fund for the Bonds and the Series 2000B Bonds described below; and (iii) to pay certain costs of issuance hereof and related costs. The existing public combined waterworks and sewerage facilities of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), and an Ordinance duly enacted by the Issuer on \_\_\_\_\_, 20\_\_\_\_ and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 20\_\_\_\_ (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other securities provided for the Bonds of this Series (the "Bonds") under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH (1) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1995, OF THE ISSUER, DATED SEPTEMBER 1, 1995, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$3,645,000 (THE "SERIES 1995 BONDS"); (2) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2000B (WEST VIRGINIA INFRASTRUCTURE FUND), OF THE ISSUER, DATED SEPTEMBER \_\_\_\_, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,000,000 (THE "SERIES 2000B BONDS"); AND (3) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2000C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), OF THE ISSUER, DATED SEPTEMBER \_\_\_\_, 2000, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$1,976,352 (THE "SERIES 2000C BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the System, on a parity with the pledge of the Gross Revenues in favor of the holders of the Series 1995 Bonds, the Series 2000B Bonds and the Series 2000C Bonds, and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2000A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross 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 an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 2000A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least

115% (120% so long as the Series 1995 Bonds remain Outstanding) of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 1995 Bonds, Series 2000B Bonds and the Series 2000C Bonds, provided however, that when the Series 1995 Bonds are no longer Outstanding and so long as there exists in the Series 2000A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Series 2000B Bonds and the Series 2000C Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

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

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

IN WITNESS WHEREOF, CITY OF MARTINSBURG has caused this Bond to be signed by its Mayor and its City Manager and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, 20\_\_.

CITY OF MARTINSBURG

[SEAL]

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
Recorder

(Form of)

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Bond is one of the Series 2000A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

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

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

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

**EXHIBIT A**

**RECORD OF ADVANCES**

|     | <u>Amount</u> | <u>Date</u> |      | <u>Amount</u> | <u>Date</u> |
|-----|---------------|-------------|------|---------------|-------------|
| (1) | \$            |             | (7)  | \$            |             |
| (2) | \$            |             | (8)  | \$            |             |
| (3) | \$            |             | (9)  | \$            |             |
| (4) | \$            |             | (10) | \$            |             |
| (5) | \$            |             | (11) | \$            |             |
| (6) | \$            |             | (12) | \$            |             |

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

**EXHIBIT B**

**DEBT SERVICE SCHEDULE**

(Form of)  
**ASSIGNMENT**

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

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

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

[Form of Series 2000B Bond]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF MARTINSBURG  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2000B  
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-\_\_\_\_\_

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

KNOW ALL MEN BY THESE PRESENTS: That CITY OF MARTINSBURG, a municipal corporation and political subdivision of the State of West Virginia in Berkeley County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as Exhibit A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing on \_\_\_\_\_, \_\_\_\_\_, as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit B, payable March 1, June 1, September 1 and December 1 of each year, commencing on \_\_\_\_\_, \_\_\_\_\_.

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

This Bond may only 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 Infrastructure and Jobs Development Council (the "Council") and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement between the Issuer and the Authority, acting on behalf of the Council, dated \_\_\_\_\_, 20\_\_.

This Bond is issued (i) to permanently finance a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public combined waterworks and sewerage facilities of the Issuer (the "Project"); account for the Bonds; and (ii) to

pay certain costs of issuance hereof and related costs. The existing public combined waterworks and sewerage facilities of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and an Ordinance duly enacted by the Issuer on \_\_\_\_\_, 20\_\_\_\_ and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 20\_\_\_\_ (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other securities provided for the Bonds of this Series (the "Bonds") under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH (1) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1995, OF THE ISSUER, DATED SEPTEMBER 1, 1995, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$3,645,000 (THE "SERIES 1995 BONDS"); (2) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2000A (WEST VIRGINIA DWTRF PROGRAM), OF THE ISSUER, DATED SEPTEMBER \_\_\_\_, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,564,000 (THE "SERIES 2000A BONDS"); AND (3) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2000C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), OF THE ISSUER, DATED SEPTEMBER \_\_\_\_, 2000, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$1,976,352 (THE "SERIES 2000C BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the System, on a parity with the pledge of the Gross Revenues in favor of the holders of the Series 1995 Bonds, the Series 2000A Bonds and the Series 2000C Bonds, and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2000B Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross 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 an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 2000B Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% (120% so long as the Series 1995 Bonds remain Outstanding) of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by

a lien on or payable from such revenues on a parity with the Bonds, including the Series 1995 Bonds, Series 2000A Bonds and the Series 2000C Bonds, provided however, that when the Series 1995 Bonds are no longer Outstanding and so long as there exists in the Series 2000B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Series 2000A Bonds and the Series 2000C Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

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

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

IN WITNESS WHEREOF, CITY OF MARTINSBURG has caused this Bond to be signed by its Mayor and its City Manager and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, 20\_\_\_\_.

CITY OF MARTINSBURG

[SEAL]

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
Recorder

(Form of)

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Bond is one of the Series 2000B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

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

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

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

**EXHIBIT A**

**RECORD OF ADVANCES**

|     | <u>Amount</u> | <u>Date</u> |      | <u>Amount</u> | <u>Date</u> |
|-----|---------------|-------------|------|---------------|-------------|
| (1) | \$            |             | (7)  | \$            |             |
| (2) | \$            |             | (8)  | \$            |             |
| (3) | \$            |             | (9)  | \$            |             |
| (4) | \$            |             | (10) | \$            |             |
| (5) | \$            |             | (11) | \$            |             |
| (6) | \$            |             | (12) | \$            |             |

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

**EXHIBIT B**

**DEBT SERVICE SCHEDULE**

(Form of)  
**ASSIGNMENT**

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

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

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

[Form of Series 2000C Bond]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF MARTINSBURG  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2000C  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

No. CR-\_\_\_\_\_

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

KNOW ALL MEN BY THESE PRESENTS: That CITY OF MARTINSBURG, a municipal corporation and political subdivision of the State of West Virginia in Berkeley County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), in annual installments on October 1 of each year, commencing on October 1, \_\_\_\_\_, as set forth on the "Debt Service Schedule" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefor, and until payment of such installment, and such interest shall be payable semiannually on April 1 and October 1 in each year, commencing \_\_\_\_\_ 1, 200\_\_. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Bond Legislation) on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may only 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 upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement between the Issuer and the Authority, dated \_\_\_\_\_, 20\_\_.

This Bond is issued (i) to permanently finance a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public combined waterworks and sewerage facilities of the Issuer (the "Project"); (ii) to fund a debt service reserve account for the Bonds; and (iii) to pay certain costs of issuance hereof and related costs. The existing

public combined waterworks and sewerage facilities of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and an Ordinance duly enacted by the Issuer on \_\_\_\_\_, 20\_\_\_\_ and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 20\_\_\_\_ (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other securities provided for the Bonds of this Series (the "Bonds") under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH (1) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1995, OF THE ISSUER, DATED SEPTEMBER 1, 1995, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$3,645,000 (THE "SERIES 1995 BONDS"); (2) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2000A (WEST VIRGINIA DWTRF PROGRAM), OF THE ISSUER, DATED SEPTEMBER \_\_\_\_, 2000, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$7,564,000 (THE "SERIES 2000A BONDS"); AND (3) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2000B (WEST VIRGINIA INFRASTRUCTURE FUND), OF THE ISSUER DATED SEPTEMBER \_\_\_\_, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,000,000 (THE "SERIES 2000B BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the System, on a parity with the pledge of the Gross Revenues in favor of the holders of the Series 1995 Bonds, the Series 2000A Bonds and the Series 2000B Bonds, and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2000C Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross 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 an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 2000C Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% (120% so long as the Series 1995 Bonds remain Outstanding) of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by

a lien on or payable from such revenues on a parity with the Bonds, including the Series 1995 Bonds, Series 2000A Bonds and the Series 2000B Bonds, provided however, that when the Series 1995 Bonds are no longer Outstanding and so long as there exists in the Series 2000C Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Series 2000A Bonds and the Series 2000B Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

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

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

IN WITNESS WHEREOF, CITY OF MARTINSBURG has caused this Bond to be signed by its Mayor and its City Manager and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, 20\_\_.

CITY OF MARTINSBURG

[SEAL]

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
Recorder

(Form of)

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Bond is one of the Series 2000C Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

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

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

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

**EXHIBIT A**

**DEBT SERVICE SCHEDULE**

(Form of)  
**ASSIGNMENT**

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

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

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.11. Sale of Series 2000 Bonds; Approval and Ratification of Execution of Loan Agreements with Authority. The Series 2000A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the DWTRF Loan Agreement. The Series 2000B Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Infrastructure Loan Agreement. The Series 2000C Bonds shall be sold to the Authority pursuant to the terms and conditions of the WDA Loan Agreement. The Loan Agreements, including all schedules and exhibits attached thereto, are hereby approved and ratified. If not so authorized by previous ordinance, the Mayor is specifically authorized and directed to execute the said Loan Agreements in the forms attached hereto as "Exhibit B" and made a part hereof, and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the said Loan Agreements to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed.

Section 3.12. Series 2000 Bonds are Issued as Parity Bonds With Respect to Prior Bonds. The Series 2000 Bonds are issued as and shall constitute parity bonds with respect to the Prior Bonds. The Issuer has met the requirements of the Prior Ordinance for the issuance of the Series 2000 Bonds on a parity with the Prior Bonds.

Section 3.13. "Amended Schedule A" Filing. Within sixty (60) days following the Completion Date, the Issuer will file with the BPH, the Council and the Authority a schedule, the form of which will be provided by the BPH, the Council and the Authority, setting forth the actual costs of the Project and sources of funds therefor.

**ARTICLE IV**

**[RESERVED]**

## ARTICLE V

### FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

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

- A. Revenue Fund (created or continued by the Prior Ordinance);
- B. Depreciation Fund (created or continued by the Prior Ordinance);
- C. Operation and Maintenance Fund (created or continued by the Prior Ordinance);
- D. Earnings Fund (created or continued by the Prior Ordinance);
- E. Rebate Fund (created or continued by the Prior Ordinance);
- F. Series 2000A Bonds Construction Trust Fund;
- G. Series 2000B Bonds Construction Trust Fund; and
- H. Series 2000C Bonds Construction Trust Fund.

Section 5.02. Establishment or Continuance of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued if previously established by the Prior Ordinance) with the Commission:

- A. Series 1995 Bonds Sinking Fund (established by the Prior Ordinance as the Series 1995 Bonds Subaccount in the Sinking Fund);
- B. Within the Series 1995 Bonds Sinking Fund, the Series 1995 Bonds Reserve Account (established by the Prior Ordinance as the Series 1995 Bonds Subaccount in the Reserve Account);
- C. Series 1995 Bonds Redemption Account (established by the Prior Ordinance as the Series 1995 Bonds Subaccount in the Redemption Account);
- D. Series 2000A Bonds Sinking Fund;

- E. Within the Series 2000A Bonds Sinking Fund, the Series 2000A Bonds Reserve Account;
- F. Series 2000B Bonds Sinking Fund;
- G. Within the Series 2000B Bonds Sinking Fund, the Series 2000B Bonds Reserve Account;
- H. Series 2000C Bonds Sinking Fund; and
- I. Within the Series 2000C Bonds Sinking Fund, the Series 2000C Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds.

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

1. The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1995 Bonds Sinking Fund, the amount required by the Prior Ordinance for payment of interest on the Prior Bonds; (ii) beginning 3 months prior to the first interest payment date on the Series 2000A Bonds, for deposit in the Series 2000A Bonds Sinking Fund, a sum equal to 1/3rd of the amount of interest which will become due on the Series 2000A Bonds on the next ensuing quarterly interest payment date, provided, that in the event the period to elapse between the date of such initial deposit in the Series 2000A Bonds Sinking Fund and the next ensuing quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next ensuing quarterly interest payment date, the required amount of interest coming due on such date; (iii) beginning 3 months prior to the first interest payment date on the Series 2000B Bonds, for deposit in the Series 2000B Bonds Sinking Fund, a sum equal to 1/3rd of the amount of interest which will become due on the Series 2000B Bonds on the next ensuing quarterly interest payment date, provided, that in the event the period to elapse between the date of such initial deposit in the Series 2000B Bonds Sinking Fund and the next ensuing quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next ensuing quarterly interest payment date, the required amount of interest coming due on such date; and (iv) beginning 6 months prior to the first interest payment date on the Series 2000C Bonds, for deposit in the Series 2000C Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 2000C Bonds 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 2000C Bonds Sinking Fund and the next ensuing semiannual interest payment date is less than 6 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date.

2. The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1995 Bonds Sinking Fund, and in the Series 1995 Bonds Redemption Account therein in the case of Term Bonds, as defined in the Prior Ordinance, which are to be redeemed, the amounts required by the Prior Ordinance for payment of principal of the Prior Bonds; (ii) beginning 3 months prior to the first principal payment date of the Series 2000A Bonds, for deposit in the Series 2000A Bonds Sinking Fund, a sum equal to 1/3rd of the amount of principal which will mature and become due on the Series 2000A Bonds on the next ensuing quarterly principal payment date, provided, that in the event the period to elapse between the date of such initial deposit in the Series 2000A Bonds Sinking Fund and the next ensuing quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next ensuing quarterly principal payment date, the required amount of principal coming due on such date; (iii) beginning 3 months prior to the first principal payment date of the Series 2000B Bonds, for deposit in the Series 2000B Bonds Sinking Fund, a sum equal to 1/3rd of the amount of principal which will mature and become due on the Series 2000B Bonds on the next ensuing quarterly principal payment date, provided, that in the event the period to elapse between the date of such initial deposit in the Series 2000B Bonds Sinking Fund and the next ensuing quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next ensuing quarterly principal payment date, the required amount of principal coming due on such date; and (iv) beginning 12 months prior to the first principal payment date of the Series 2000C Bonds, for deposit in the Series 2000C Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on the Series 2000C Bonds on the next ensuing annual principal payment date, provided, that in the event the period to elapse between the date of such initial deposit in the Series 2000C Bonds Sinking Fund and the next ensuing annual principal payment date is less than 12 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next ensuing annual principal payment date, the required amount of principal coming due on such date.

3. The Issuer shall next, from the moneys remaining in the Revenue Fund each month, transfer from the Revenue Fund and deposit in the Operation and Maintenance Fund an amount sufficient to pay current Operating Expenses of the System.

4. The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1995 Bonds Reserve Account, the amount, if any, required by the Prior Ordinance to be deposited therein (which Series 1995 Bonds Reserve Account is currently funded by the Surety Bond provided by MBIA); (ii)

beginning 3 months prior to the first principal payment date of the Series 2000A Bonds, if not fully funded upon issuance of the Series 2000A Bonds, for deposit in the Series 2000A Bonds Reserve Account, an amount equal to 1/120th of the Series 2000A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2000A 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 2000A Bonds Reserve Requirement; (iii) beginning 3 months prior to the first principal payment date of the Series 2000B Bonds, if not fully funded upon issuance of the Series 2000B Bonds, for deposit in the Series 2000B Bonds Reserve Account, an amount equal to 1/120th of the Series 2000B Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2000B 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 2000B Bonds Reserve Requirement; and (iv) beginning 6 months prior to the first principal payment date of the Series 2000C Bonds, if not fully funded upon issuance of the Series 2000C Bonds, for deposit in the Series 2000C Bonds Reserve Account, an amount equal to 1/120th of the Series 2000C Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2000C 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 2000C Bonds Reserve Requirement.

5. The Issuer shall next, from the moneys remaining in the Revenue Fund, on the first day of each month, transfer to the Depreciation Fund a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for the account of any Reserve Account in the respective Sinking Funds.

Withdrawals and disbursements may be made by the Issuer from the Depreciation Fund only for the following purposes and in the following order of priority:

(a) To make up any deficiency in any Reserve Account (so that the amount on deposit therein is at least equal to the Reserve Requirement), or to pay any amount payable under a Financial Guaranty Agreement;

(b) For the payment of the principal (including the principal amount to be paid under the mandatory redemption schedules) of or interest on the Bonds, but only in the event that at the time of such withdrawal there are not sufficient funds for such purpose in the respective Sinking Funds (including the respective Reserve Accounts);

(c) For the payment of the reasonable costs of land and depreciable renewals, repairs, extensions, improvements and additions to the System;

(d) For the payment of debt service on obligations not on a parity with the Bonds, the proceeds of which obligations were used to finance such land and depreciable renewals, repairs, extensions, improvements and additions to the System; or

(e) Moneys in the Depreciation Fund in excess of a sum which is sufficient for the purposes of capital replacements, additions or improvements for the System or any part thereof during the then present Fiscal Year and the next ensuing Fiscal Year may be transferred, upon resolution of the Issuer, to the Redemption Account or the Series 2000 Bonds Sinking Funds and used for optional redemption or for purchase of Bonds. In the event of purchase of Bonds, the Issuer may direct the purchase of Bonds offered for sale at the lowest price below the redemption price of such Bonds.

6. The Issuer shall next, each month pay to MBIA (or any other provider of a Reserve Account Insurance Policy) any interest which may be owed on amounts advanced under the Surety Bond (as defined in the Prior Ordinance).

7. The Issuer may next, each month, after making the above required transfers of money from the Revenue Fund, accrue the surplus then remaining in the Revenue Fund. Any such surplus in the Revenue Fund shall be deemed "Surplus Revenues" and may be used for any lawful purpose of the System, including payment of debt service on subordinate indebtedness of the System.

8. If on any monthly payment date the Revenues of the System are insufficient to make the required deposits in any of the funds as hereinabove provided, the deficiency shall be made up on the next ensuing payment dates by payments in addition to the payments which are otherwise required to be made into the funds on such ensuing payment dates, provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

9. Principal and interest payments into the respective Sinking Funds, and any payments made for the purpose of funding a deficiency in any Reserve Account shall be made on a parity and pro rata with respect to the Prior Bonds, the Series 2000A Bonds, the Series 2000B Bonds and the Series 2000C Bonds in accordance with the respective principal amounts then Outstanding.

B. Moneys in the respective Series 2000 Bonds Sinking Funds shall be used only for the purposes of paying principal of and interest on the Series 2000 Bonds, respectively, as the

same shall become due. Moneys in the respective Series 2000 Bonds Reserve Accounts shall be used only for the purpose of paying principal of and interest on the Series 2000 Bonds, respectively, as the same shall come due, when other moneys in the respective Series 2000 Bonds Sinking Funds are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2000 Bonds Sinking Funds and the Series 2000 Bonds Reserve Accounts shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the respective Series 2000 Bonds Construction Trust Funds, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2000 Bonds, respectively, and then to the next ensuing principal payment due thereon, all on a pro rata basis.

Any withdrawals from the Series 2000 Bonds Reserve Accounts which result in a reduction in the balance therein to below the respective Reserve Requirements shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2000 Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the maximum amount of principal and interest which will become due in any year for account of the Bonds of such series of additional parity Bonds.

The Issuer shall not be required to make any further payments into the respective Series 2000 Bonds Sinking Funds or the respective Series 2000 Bonds Reserve Accounts when the aggregate amount of funds therein are at least equal to the respective aggregate principal amount of the respective Series 2000 Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2000 Bonds Sinking Funds and the Series 2000 Bonds Reserve Accounts created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the time provided herein. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Moneys in the Series 2000 Bonds Sinking Funds and the Series 2000 Bonds Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2000 Bonds Sinking Funds and the Series 2000 Bonds Reserve Accounts shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2000 Bonds, respectively, under the conditions and restrictions set forth herein.

C. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month), deposit with the Commission the required interest, principal and reserve account payments with respect to the Series 2000 Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. The Issuer shall also on the first day of each month (if the first day is not a business day, then the first business day of each month), deposit with the Commission the DWTRF Administrative Fee as set forth in the Schedule Y attached to the DWTRF Loan Agreement for the Series 2000A Bonds.

D. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreements and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

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

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

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

Section 5.04. Reserve Account Insurance Policy. In lieu of funding the Reserve Account for any series of Bonds with cash or Qualified Investments, the Reserve Requirement may be satisfied by the purchase by the Issuer of a Reserve Account Insurance Policy and/or the deposit into the Reserve Account of a reserve account letter of credit in an amount at least equal to the Reserve Requirement.

## ARTICLE VI

### BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from time to time from the sale of any or all of the Series 2000 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2000 Bonds, there shall first be deposited with the Commission in the respective Series 2000 Bonds Sinking Funds, the amount, if any, specified in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the respective Series 2000 Bonds for the period commencing on the date of issuance of the Series 2000 Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 2000 Bonds, there shall be deposited with the Commission in the respective Series 2000 Bonds Reserve Accounts, the amount, if any, set forth in the Supplemental Resolution for funding of the respective Series 2000 Bonds Reserve Accounts.

C. Next, from the proceeds of the Series 2000 Bonds, there shall first be credited to the respective Series 2000 Bonds Construction Trust Fund and then paid, any and all borrowings by the Issuer made for the purpose of temporarily financing a portion of the Costs of the Project, together with interest accrued thereon to the date of such payment, not otherwise paid from funds of the Issuer.

D. As the Issuer receives advances of the remaining moneys derived from the sale of such Series 2000A Bonds and Series 2000B Bonds, such moneys shall be deposited with the Depository Bank respectively in the Series 2000A Bonds Construction Trust Fund and Series 2000B Bonds Construction Trust Fund. With respect to the Series 2000C Bonds, the remaining monies from the sale of the Series 2000C Bonds shall be deposited with the Depository Bank in the Series 2000C Bonds Construction Trust Fund. The monies in the respective Series 2000 Bonds Construction Trust Funds shall be applied solely to payment of Costs of the Project in the manner set forth in Section 6.02.

E. After completion of construction of the Project, as certified by the Consulting Engineers, and all Costs have been paid, any remaining proceeds of the Series 2000A Bonds shall be expended as approved by the BPH, any remaining proceeds of the Series 2000B Bonds shall be expended as approved by the Council and any remaining proceeds of the Series 2000C Bonds shall be expended as approved by the Authority.

F. The Depository Bank shall act as a trustee and fiduciary for the Holders of the Series 2000 Bonds with respect to the Series 2000 Bonds Construction Trust Funds and shall comply with all requirements with respect to the disposition of such funds set forth in the Bond Legislation. Moneys in the Series 2000 Bonds Construction Trust Funds shall be used solely to pay Costs of the Project and until so transferred or expended, are hereby pledged as additional security for the respective Series 2000 Bonds.

Section 6.02. Disbursements From the Construction Trust Funds. A. With respect to the Series 2000A Bonds, on or before the Closing Date, the Issuer shall have delivered to the Authority a report listing the specific purposes for which the proceeds of the Series 2000A Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for costs of the Project from the proceeds of the Series 2000A Bonds shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2000A Bonds Construction Trust Funds shall be made only after submission to, and approval from the BPH of the following:

I. A completed and signed "Payment Requisition Form," the form of which is attached to the DWTRF Loan Agreement, in compliance with the construction schedule; and

II. A certificate, signed by an Authorized Officer and the Consulting Engineers, stating that:

1. None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

2. 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;

3. Each of such costs has been otherwise properly incurred; and

4. Payment for each of the items proposed is then due and owing.

Pending such application, moneys in the Series 2000A Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

After completion of construction of the Project, as certified by the Consulting Engineers, and all costs of the Project have been paid, any remaining proceeds of the Series 2000A Bonds shall be expended as directed by the BPH.

B. With respect to the Series 2000B Bonds, the Issuer shall each month provide the Council with a requisition for the costs incurred for the Project, together with such documentation as the Council shall require. Payments for costs of the Project from the proceeds of the Series 2000B Bonds shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2000B Bonds Construction Trust Fund shall be made only after submission to and approval from the Council, of a certificate, signed by an Authorized Officer and the Consulting Engineers, stating that:

1. None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
2. 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;
3. Each of such costs has been otherwise properly incurred; and
4. Payment for each of the items proposed is then due and owing.

Pending such application, moneys in the Series 2000B Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

After completion of construction of the Project, as certified by the Consulting Engineers, and all costs of the Project have been paid, any remaining proceeds of the Series 2000B Bonds shall be expended as directed by the Council.

The Issuer shall expend all proceeds of the Series 2000B Bonds within 3 years of the date of issuance of the State's general obligation bonds, the proceeds of which were used to make the loan to the Issuer.

C. With respect to the Series 2000C Bonds, except as provided in Section 6.01 hereof, disbursements from the Series 2000C Bonds Construction Trust Fund shall be made monthly only after submission to the Depository Bank, of a certificate, signed by an Authorized Officer and the Consulting Engineers, stating that:

1. None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
2. 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;
3. Each of such costs has been otherwise properly incurred; and

4. Payment for each of the items proposed is then due and owing.

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Series 2000C Bonds Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Series 2000C Bonds Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from such funds. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Series 2000C Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

After completion of construction of the Project, as certified by the Consulting Engineers, and all costs of the Project have been paid, any remaining proceeds of the Series 2000C Bonds shall be expended as directed by the Authority.

The Issuer shall expend all proceeds of the Series 2000C Bonds within 3 years of the date of issuance of the Authority's bonds, the proceeds of which were used to make the loan of the Issuer.

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2000 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2000 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2000 Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2000 Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any of the Series 2000 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2000 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues; Lien Positions With Respect to Prior Bonds. The payment of the debt service of the Series 2000 Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Gross Revenues derived from the operation of the System on a parity with the lien on such Gross Revenues in favor of the Holders of the Prior Bonds. Gross Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 2000 Bonds and to make the payments into all funds and accounts, and all other payments provided for in the Bond Legislation and the Prior Ordinance are hereby irrevocably pledged, in the manner provided herein, to such payments as the same become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreements. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved and described in the Ordinance enacted by the Issuer on November 12, 1998.

So long as the Series 2000 Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in

compliance with the Loan Agreements. In the event the schedule of rates and charges initially established for the System in connection with the Series 2000 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreements, the Issuer hereby covenants and agrees that it will, to the extent and in the manner authorized by law, immediately adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreements.

Section 7.05. Sale of the System. So long as the Prior Bonds are Outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of the System, or any part thereof, except as provided in the Prior Ordinance. Additionally, so long as the Series 2000 Bonds are Outstanding and except as otherwise required by law or with the written consent of the BPH, the Council and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Series 2000 Bonds and Prior Bonds Outstanding, or to effectively defease this Bond Legislation in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the Series 1995Bonds Sinking Fund, the Series 2000A Bonds Sinking Fund, the Series 2000B Bonds Sinking Fund and the Series 2000C Bonds Sinking Fund, respectively, pro rata, with respect to the principal amount of each of the Series 2000 Bonds and Prior Bonds then Outstanding, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest on the Series 2000 Bonds and Prior Bonds in such manner. Any balance remaining after the payment of all the Series 2000 Bonds and Prior Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$50,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$50,000 but not in excess of \$200,000, the Issuer shall first, in writing, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property in

accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property shall be deposited in the Depreciation Fund. Such payment of such proceeds into the Depreciation Fund shall not reduce the amounts required to be paid into said fund by other provisions of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$200,000 and insufficient to pay the Series 2000 Bonds and Prior Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the Series 2000 Bonds and Prior Bonds then outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds and Prior Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 7.06 and in Section 7.07, so long as any of the Series 2000 Bonds are Outstanding, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2000 Bonds. All obligations issued by the Issuer after the issuance of the Series 2000 Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2000 Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein at the time of the issuance of such subordinate obligations have been made and are current. Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2000 Bonds, and the interest thereon, if any, upon any of the income and revenues of the System pledged for payment of the Series 2000 Bonds and the interest thereon, if any, in this Bond Legislation, or upon the System or any part thereof.

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

Section 7.07. Parity Bonds. So long as any of the Prior Bonds are Outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinance shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2000 Bonds pursuant to this Bond Legislation, except under the conditions and in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2000 Bonds, and must have the prior written consent of the Authority, BPH and the Council.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of additions, extensions, improvements or betterments to the System or refunding one or more series of the Prior Bonds and/or the Series 2000 Bonds, or both such purposes.

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

- (1) The Prior Bonds and Series 2000 Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates enacted by the Issuer, the period for appeal of which has expired (without successful appeal) prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accounts, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

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

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and

security of the Holders of the Series 2000 Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2000 Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2000 Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Bond Legislation and the Prior Ordinance with respect to the Series 2000 Bonds and Prior Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

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

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

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant

to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

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

- A. A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- B. A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation with respect to the Bonds and the status of all said funds and accounts.
- C. The amount of any Bonds or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to the Authority, the Council and the BPH, or any other original purchaser of the Bonds. Such audit report submitted to the Authority, the Council and the BPH shall include a statement that the Issuer is in compliance with the terms and provisions of the DWTRF Loan Agreement, the Infrastructure Council Loan Agreement and the WDA Loan Agreement, the Act and this Bond Legislation, and that the Issuer's revenues are adequate to meet its operation and maintenance expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreements and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests

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

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

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

Section 7.09. Rates. Prior to the issuance of the Series 2000 Bonds, equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient to provide the amounts required under the Prior Ordinance and when the Prior Bonds are no longer Outstanding, (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Series 2000 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2000 Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit, respectively, in the Series 2000 Bonds Reserve Accounts and reserve accounts for obligations on a parity with the Series 2000 Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Series 2000 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2000 Bonds.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the

Authority, the Council and the BPH within 30 days of adoption thereof. The Issuer, by the unanimous consent and approval of the Governing Body, may amend the budget during the subject Fiscal Year provided that the budget remains balanced after such amendment. If the budget is so amended, a copy of the amended budget shall be submitted to the Authority, the Council and the BPH within 15 days of the adoption of such amendment. After the adoption of any such amendment, the budget, as amended, shall be the budget of the Issuer for the balance of the subject Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget, any amendments thereto and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, the Council and the BPH and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets, any amendments thereto and resolutions be furnished him or her and shall make available such budgets, any amendments thereto and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreements and forward a copy of such report to the Authority, the Council and the BPH by the 10th day of each month.

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

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the DWTRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the BPH in writing of such receipt.

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

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the DWTRF Regulations, to the BPH when the Project is 90% completed.

The Issuer agrees that qualified operating personnel properly certified by the State will be employed before the Project is 50% complete and agrees that it will retain such a certified operator(s) to operate the System so long as the Series 2000 Bonds are Outstanding. The Issuer shall notify the BPH in writing of the certified operator employed at the 50% completion stage.

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

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

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

permitted by law. If the water facilities are not owned by the Issuer, the Issuer shall enter into a termination agreement with the water provider, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

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

Section 7.15. Insurance and Construction Bonds. The Issuer will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the System, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. The Issuer 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 Authority, the Council and the BPH, so long as the Authority is the Owner of the Bonds. The Issuer shall verify such insurance prior to commencement of construction. The Issuer 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, such insurance to be payable to the order of the Issuer, the Authority, the prime contractor and all subcontractors as their interests may appear, in accordance with the Loan Agreements, during construction of the Project in the full insurable value thereof. In time of war, the Issuer 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 placed in the Depreciation Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Depreciation Fund. The Issuer 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 Issuer shall carry such other insurance as is required by the Authority, the Council and the BPH and as set forth in the Loan Agreements, including but not limited to flood insurance and business interruption insurance, to the extent available at reasonable cost to the Issuer.

The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of

the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify such bonds prior to commencement of construction.

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

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

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

The Issuer has obtained all permits required by state and federal laws for the acquisition and construction of the Project and all orders and approvals from the Public Service Commission of West Virginia and the Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Series 2000 Bonds required by state law, with all requisite appeal periods having expired without successful appeal.

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

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

Section 7.19. Securities Laws Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.20. Contracts; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2000 Bonds or within thirty days thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the Council and the BPH for written approval. The Issuer shall obtain the written approval of the Council and the BPH before expending any proceeds of the Series 2000 Bonds held in "contingency" as set forth in the schedule attached to the Certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the Council and the BPH before expending any proceeds of the Series 2000 Bonds made available due to bid or construction or project underruns.

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

Section 7.21. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2000 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2000 Bonds during the term thereof is, under the terms of the Series 2000 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect to any property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2000 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2000 Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of

the Series 2000 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2000 Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 2000 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.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2000 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure that tax-exempt status of the Series 2000B Bonds and Series 2000C Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 2000B Bonds and Series 2000C Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

Section 7.22. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2000 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2000 Bonds and shall be for the equal benefit of all Holders of each respective series of Series 2000 Bonds; provided, however, that the statutory mortgage lien in favor of the Holders of the Series 2000 Bonds shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

## ARTICLE VIII

### INVESTMENT OF FUNDS; NON ARBITRAGE

Section 8.01. Investments. So long as any of the Prior Bonds remain Outstanding, Section 5.01 of the Prior Ordinance shall govern the investment of moneys held as part of the funds and accounts created or continued by the Prior Ordinance. Any moneys held as a part of the funds and accounts created or continued by this Bond Legislation shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such moneys for the purposes set forth herein, and the specific restrictions and provisions set forth in this Section 8.01.

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

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year (or more often if reasonably requested by the Issuer), a summary of such funds, accounts, and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2000 Bonds are Outstanding and so long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Series 2000B Bonds and Series 2000C Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2000A Bonds as a condition of issuance of the Series 2000A Bonds. In addition, the Issuer covenants (i) to comply with the Code and all

Regulations from time to time in effect and applicable to the Series 2000A Bonds as may be necessary in order to maintain the status of the Series 2000A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2000A Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority, the Council or the BPH, as the case may be, from which the proceeds of the Series 2000A Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority, the Council or the BPH, to ensure compliance with the covenants and agreements set forth in this Section 8.02, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

Section 8.03. Arbitrage. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the proceeds of the Series 2000B Bonds and Series 2000C Bonds which would cause such Bonds to be "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to such Bonds) so that the interest on such 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 8.04. Small Issuer Exemption from Rebate. In accordance with Section 148(f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that the Series 2000B Bonds and Series 2000C Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the Net Proceeds of the Series 2000B Bonds and Series 2000C Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds as defined in Section 141 of the Code) issued by the Issuer during the calendar year in which the Series 2000B Bonds and Series 2000C Bonds are issued does not and will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations promulgated thereunder. For purposes of this Section 8.04 and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section 8.04 and Section 148(f)(4)(D) of the Code, be treated as not issued by such governmental unit, all obligations issued by a subordinate entity shall, for purposes of applying this Section 8.04 and Section 148(f)(4)(D) of the Code to any other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefitting thereby shall be treated as one issuer.

The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate (or the exemption therefrom) and other tax matters as a condition to issuance of the Series 2000B Bonds and Series 2000C Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer covenants to make, or cause to be made, all rebate calculations, computations and payments in the time, manner and as required in Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 2000B Bonds and Series 2000C Bonds and otherwise covenants and agrees to comply with the provisions of such Section 148(f) of the Code and the Regulations from time to time in effect and applicable to such Bonds. In the event of a failure to pay the correct rebate amount, the Issuer will pay from any lawful sources available therefore, to the United States such amount, plus a penalty equal to 50% of the rebate amount not paid, plus interest on that amount, unless waived. The Issuer shall obtain a waiver from the Internal Revenue Service and take any other actions necessary to assure the exclusion of interest on such Bonds from gross income of the Holders thereof. In order to provide for the administration of this paragraph, the Issuer may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Issuer may deem appropriate.

The Issuer shall furnish to the Authority, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority. In addition, the Issuer shall cooperate with the Authority in preparing any required rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation and certificate with respect thereto or, if the Issuer qualifies for the small governmental issue exception to rebate, or any other exception therefrom, then the Issuer shall submit to the Authority a certificate stating that it is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series 2000B Bonds or Series 2000C Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of such Bonds (as such term "gross proceeds" is defined in the Code).

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an “Event of Default” with respect to the Series 2000 Bonds:

A. If default occurs in the due and punctual payment of the principal of or interest on the Series 2000 Bonds; or

B. If default occurs in the Issuer’s observance of any of the covenants, agreements or conditions on its part relating to the Series 2000 Bonds, set forth in this Bond Legislation, any supplemental resolution or in the Series 2000 Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, Registrar or any other Paying Agent or a Holder of a Bond; or

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

D. If default occurs with respect to the Prior Bonds or the Prior Ordinance.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Holders of the Bonds, including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Holders of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that all rights and remedies of the Holders of the Series 2000 Bonds shall be on a parity with the Holders of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Holder of a Bond, may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Holder of a Bond, shall, in addition to all other remedies or rights, have the right by appropriate legal

proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other avenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

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

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

## ARTICLE X

### PAYMENT AND DEFEASANCE OF BONDS

Section 10.01. Payment of Series 2000A Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holder of the Series 2000A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 2000A Bonds only, the pledge of Gross Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Series 2000A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Section 10.02. Payment of Series 2000B Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holder of the Series 2000B Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 2000B Bonds only, the pledge of Gross Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Series 2000B Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2000B Bonds from gross income for federal income tax purposes.

Section 10.03. Defeasance of Series 2000C Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holder of the Series 2000C Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 2000C Bonds only, the pledge of Gross Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2000C Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2000C Bonds from gross income for federal income tax purposes; provided that, as long as the Authority is the owner of any of the Series 2000C Bonds Outstanding, the Issuer shall not redeem any of the Series 2000C Bonds without the written consent of the Authority, and such redemption of the Series 2000C Bonds authorized by the Authority shall provide for the payment of interest to the first allowable redemption date for the applicable water development revenue bonds of the Authority, the redemption premium payable on such water development revenue bonds redeemable as a consequence of such redemption of the Series 2000C Bonds and the costs and expenses of the Authority in effecting any such redemption.

Series 2000C 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 Commission at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the

principal installments of and interest on such Series 2000C Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 2000C Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 2000C Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 2000C Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Series 2000C Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to the issuance of the Series 2000 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2000 Bonds, no material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Series 2000 Bonds shall be made without the consent in writing of the Holders of the Series 2000 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Series 2000 Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest on the Series 2000 Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Holders of the Series 2000 Bonds and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution, or the Series 2000 Bonds.

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

Section 11.05. Conflicting Provisions Repealed. Except for the Prior Ordinance, all ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed. In the event of any conflict between this Ordinance and the Prior Ordinance, the Prior Ordinance shall control (so long as the Prior Bonds are Outstanding).

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken

precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Manager, the Recorder and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance, substantially in the form attached hereto as Exhibit C, which is determined by the Issuer to contain sufficient information as to give notice of the contents hereof, shall be published once a week for 2 successive weeks within a period of 14 consecutive days, with at least 6 full days intervening between each publication, in a qualified newspaper of general circulation in the City of Martinsburg, together with the notice set forth therein stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than 10 days subsequent to the date of the first publication of the said abstract and notice, and present protests, and that a certified copy of the Ordinance is on file in the office of the Recorder for review by interested parties during the office hours of the Recorder.

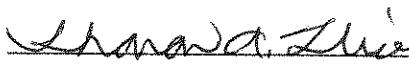
At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Section 11.08. Effective Date. This Ordinance shall take effect following the public hearing described in Section 11.07 above.

|                                                  |                    |
|--------------------------------------------------|--------------------|
| Passed on First and Second Reading               | September 7, 2000  |
| Passed on Third Reading                          | September 14, 2000 |
| Put into effect following public hearing held on | September 25, 2000 |

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Manager

  
\_\_\_\_\_  
Recorder

precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Manager, the Recorder and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance, substantially in the form attached hereto as Exhibit C, which is determined by the Issuer to contain sufficient information as to give notice of the contents hereof, shall be published once a week for 2 successive weeks within a period of 14 consecutive days, with at least 6 full days intervening between each publication, in a qualified newspaper of general circulation in the City of Martinsburg, together with the notice set forth therein stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than 10 days subsequent to the date of the first publication of the said abstract and notice, and present protests, and that a certified copy of the Ordinance is on file in the office of the Recorder for review by interested parties during the office hours of the Recorder.

At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Section 11.08. Effective Date. This Ordinance shall take effect following the public hearing described in Section 11.07 above.

Passed on First and Second Reading

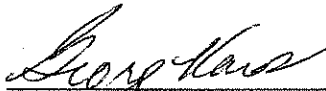
September 7, 2000

Passed on Third Reading

September 14, 2000

Put into effect following public  
hearing held on

September 25, 2000

  
\_\_\_\_\_  
Mayor

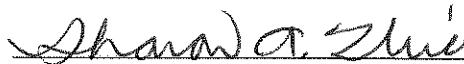
  
\_\_\_\_\_  
City Manager

  
\_\_\_\_\_  
Recorder

## CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Common Council of the CITY OF MARTINSBURG on the 14th day of September, 2000, and put into effect following a public hearing held on September 25, 2000.

Dated: September 27, 2000.



Recorder

[SEAL]

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Common Council of the CITY OF MARTINSBURG on the 14th day of September, 2000, and put into effect following a public hearing held on September 25, 2000.

Dated: September 27, 2000.

Shana A. Lusk  
Recorder

[SEAL]

Exhibit A

**DESCRIPTION OF PROJECT**

The acquisition and construction of certain additions, betterments and improvements to the waterworks portion of Issuer's existing combined waterworks and sewerage system, in the City of Martinsburg, Berkeley County, West Virginia, consisting of upgrading the existing treatment facilities with two (2) new filtration plants, the Baltimore & Williams Plant and the Big Springs Plant, and related appurtenance and improvements.

Exhibit B

**LOAN AGREEMENTS**

**[See Tab Numbers 3, 4 and 5]**

Exhibit C

**NOTICE OF PUBLIC HEARING**

CITY OF MARTINSBURG  
NOTICE OF PUBLIC HEARING  
ON BOND ORDINANCE

A public hearing will be held on the following entitled Ordinance at a special meeting of the Council of the City of Martinsburg to be held on September \_\_\_\_, 2000, at \_\_\_\_\_.m., in the Council Chambers at the Martinsburg City Hall, 232 North Queen Street, Martinsburg, West Virginia, and at such hearing all objections and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF MARTINSBURG AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF MARTINSBURG OF NOT MORE THAN TWELVE MILLION FIVE HUNDRED FORTY THOUSAND THREE HUNDRED FIFTY-TWO DOLLARS (\$12,540,352) IN AGGREGATE PRINCIPAL AMOUNT OF CITY OF MARTINSBURG COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS IN THREE SERIES, THE FIRST SERIES TO BE DESIGNATED SERIES 2000A (WEST VIRGINIA DWTRF PROGRAM) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED SEVEN MILLION FIVE HUNDRED SIXTY-FOUR THOUSAND DOLLARS (\$7,564,000), THE SECOND SERIES TO BE DESIGNATED SERIES 2000B (WEST VIRGINIA INFRASTRUCTURE FUND) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED THREE MILLION DOLLARS (\$3,000,000), AND THE THIRD SERIES TO BE DESIGNATED SERIES 2000C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED ONE MILLION NINE HUNDRED SEVENTY-SIX THOUSAND THREE HUNDRED FIFTY-TWO DOLLARS (\$1,976,352); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF THE RESPECTIVE SERIES OF SUCH COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS; APPROVING, RATIFYING AND CONFIRMING (1) A

LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY ACTING ON BEHALF OF THE WEST VIRGINIA BUREAU FOR PUBLIC HEALTH RELATING TO SUCH SERIES 2000A BONDS, (II) A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY ACTING ON BEHALF OF THE WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL RELATING TO SUCH SERIES 2000B BONDS, AND (III) A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY RELATING TO SUCH SERIES 2000C BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The above-entitled Ordinance was enacted by the Council of the City of Martinsburg on September \_\_\_\_, 2000.

The above quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bond issues contemplated thereby. The Bonds are to provide permanent financing of a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the water treatment facilities for the City of Martinsburg (the "Project"). The Bonds are payable solely from revenues derived from the ownership and operation of the combined waterworks and sewerage system of the City of Martinsburg. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

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

Following the said public hearing, the City Council intends to put said Ordinance into effect.

Dated: \_\_\_\_\_, 2000.

/s/ \_\_\_\_\_, Recorder



**CITY OF MARTINSBURG  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,**

**SERIES 2000A  
(WEST VIRGINIA DWTRF PROGRAM)**

**SERIES 2000B  
(WEST VIRGINIA INFRASTRUCTURE FUND)**

**SERIES 2000C  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)**

**SUPPLEMENTAL RESOLUTION**

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITIES, INTEREST RATES, PAYMENT SCHEDULES, SALE PRICES AND OTHER TERMS OF THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2000A (WEST VIRGINIA DWTRF PROGRAM), SERIES 2000B (WEST VIRGINIA INFRASTRUCTURE FUND) AND SERIES 2000C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY) OF THE CITY OF MARTINSBURG; AUTHORIZING AND APPROVING LOAN AGREEMENTS RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A BOND REGISTRAR, DEPOSITORY BANK, AND PAYING AGENT; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the City Council (the "Governing Body") of the City of Martinsburg (the "Issuer") has duly and officially enacted an Ordinance on September 14, 2000 effective September 25, 2000 (the "Ordinance") entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE CITY OF MARTINSBURG AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF MARTINSBURG OF NOT MORE THAN TWELVE MILLION FIVE HUNDRED FORTY THOUSAND THREE HUNDRED FIFTY-TWO DOLLARS

(\$12,540,352) IN AGGREGATE PRINCIPAL AMOUNT OF CITY OF MARTINSBURG COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS IN THREE SERIES, THE FIRST SERIES TO BE DESIGNATED SERIES 2000A (WEST VIRGINIA DWTRF PROGRAM) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED SEVEN MILLION FIVE HUNDRED SIXTY-FOUR THOUSAND DOLLARS (\$7,564,000), THE SECOND SERIES TO BE DESIGNATED SERIES 2000B (WEST VIRGINIA INFRASTRUCTURE FUND) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED THREE MILLION DOLLARS (\$3,000,000), AND THE THIRD SERIES TO BE DESIGNATED SERIES 2000C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED ONE MILLION NINE HUNDRED SEVENTY-SIX THOUSAND THREE HUNDRED FIFTY-TWO DOLLARS (\$1,976,352); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF THE RESPECTIVE SERIES OF SUCH COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS; APPROVING, RATIFYING AND CONFIRMING (I) A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY ACTING ON BEHALF OF THE WEST VIRGINIA BUREAU FOR PUBLIC HEALTH RELATING TO SUCH SERIES 2000A BONDS, (II) A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY ACTING ON BEHALF OF THE WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL RELATING TO SUCH SERIES 2000B BONDS, AND (III) A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY RELATING TO SUCH SERIES 2000C BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Ordinance provides for the issuance by the Issuer of not more than Twelve Million Five Hundred Forty Thousand Three Hundred Fifty-Two Dollars (\$12,540,352) in aggregate principal amount of City of Martinsburg Combined Waterworks and Sewerage System Revenue Bonds in three series, the first series to be designated Series 2000A (West Virginia DWTRF Program) in an aggregate principal amount not to exceed Seven Million Five Hundred

Sixty-Four Thousand Dollars (\$7,564,000) (the "Series 2000A Bonds"), the second series to be designated Series 2000B (West Virginia Infrastructure Fund) in an aggregate principal amount not to exceed Three Million Dollars (\$3,000,000) (the "Series 2000B Bonds"), and the third series to be designated Series 2000C (West Virginia Water Development Authority) in an aggregate principal amount not to exceed One Million Nine Hundred Seventy-Six Thousand Three Hundred Fifty-Two Dollars (\$1,976,352) (the "Series 2000C Bonds" and collectively with the Series 2000A Bonds and the Series 2000B Bonds, the "Series 2000 Bonds");

WHEREAS, the Issuer in the Ordinance has authorized the execution and delivery of loan agreements relating to the respective series of Series 2000 Bonds (sometimes collectively referred to herein as the "Loan Agreements") as follows: (i) a Loan Agreement with the West Virginia Water Development Authority (the "Authority"), acting on behalf of the West Virginia Bureau for Public Health (the "BPH") relating to the Series 2000A Bonds (the "DWTRF Loan Agreement"), (ii) a Loan Agreement with the Authority, acting on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") relating to the Series 2000B Bonds (the "Infrastructure Loan Agreement"), and (iii) a Loan Agreement with the Authority relating to the Series 2000C Bonds (the "WDA Loan Agreement"), all in accordance with the Act; and in the Ordinance it is provided that the exact principal amounts, dates, maturities, interest rates, payment schedules, sale prices and other terms of the Series 2000 Bonds should be established by a supplemental resolution pertaining to the Series 2000 Bonds; and that other matters relating to the Series 2000 Bonds be herein provided for;

WHEREAS, the Series 2000A Bonds, the Series 2000B Bonds and the Series 2000C Bonds shall be on parity with respect to liens, pledges and sources of and security for payment with respect to each other and with respect to the Prior Bonds;

WHEREAS, the forms of the Loan Agreements have been presented to the Issuer at this meeting for final ratification and approval;

WHEREAS, the Series 2000 Bonds are proposed to be purchased by the Authority pursuant to the respective Loan Agreements; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted and that the Loan Agreements be finally ratified and approved and entered into by the Issuer, that the exact principal amounts, the dates, the maturities, the interest rates and the payment schedules of the Series 2000 Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Series 2000 Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MARTINSBURG:

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

A. Combined Waterworks and Sewerage System Revenue Bonds, Series 2000A (West Virginia DWTRF Program) of the Issuer, originally represented by a single bond, numbered AR-1, in the principal amount of \$7,564,000. The Series 2000A Bonds shall be dated the date of delivery thereof, shall finally mature on March 1, 2022, shall bear interest at the rate of two percent (2%) per annum, payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2002, shall be subject to redemption upon the written consent of the Authority and the BPH, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the DWTRF Loan Agreement, as long as the Authority shall be registered owner of the Series 2000A Bonds, and shall be payable in quarterly installments of principal on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2002, in the amounts as set forth in the Debt Service Schedule attached thereto and to the DWTRF Loan Agreement and incorporated therein by reference. The Issuer does approve and shall pay the DWTRF Administrative Fee equal to 1% of the principal amount of the Series 2000A Bonds, payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2002, as set forth in the Debt Service Schedule attached thereto and to the DWTRF Loan Agreement.

B. Combined Waterworks and Sewerage System Revenue Bonds, Series 2000B (West Virginia Infrastructure Fund) of the Issuer, originally represented by a single bond, numbered BR-1, in the principal amount of \$3,000,000. The Series 2000B Bonds shall be dated the date of delivery thereof, shall finally mature on March 1, 2022, shall bear interest at the rate of three percent (3%) per annum, payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2002, shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Infrastructure Loan Agreement, as long as the Authority shall be registered owner of the Series 2000B Bonds, and shall be payable in quarterly installments of principal on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2002, in the amounts as set forth in the Debt Service Schedule attached thereto and to the Infrastructure Loan Agreement and incorporated therein by reference.

C. Combined Waterworks and Sewerage System Revenue Bonds, Series 2000C (West Virginia Water Development Authority) of the Issuer, originally represented by a single bond, numbered CR-1, in the principal amount of \$1,976,352. The Series 2000C Bonds shall be dated the date of delivery thereof, shall finally mature on October 1, 2039, shall bear interest at the rate of 5.8% per annum, payable semi-annually on April 1 and October 1 of each year, commencing April 1, 2001, shall be subject to redemption upon the written consent of the Authority, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the WDA Loan Agreement, as long as the Authority shall be registered owner of the Series 2000C Bonds, and shall

be payable in annual installments of principal on October 1 of each year, commencing October 1, 2001, and in the amounts as set forth in the Debt Service Schedule attached thereto and to the WDA Loan Agreement and incorporated therein by reference.

**Section 2.** All other provisions relating to the Series 2000 Bonds shall be as provided in the Ordinance and the respective forms of the Series 2000A Bonds, the Series 2000B Bonds and the Series 2000C Bonds shall be as provided in the Ordinance, provided, however, Section 7.10 of the Ordinance entitled "Operating Budget and Financial Report" is hereby amended to read as follows:

**Section 7.10. Operating Budget and Monthly Financial Report.** The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority, the Council and the BPH within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget until the Issuer shall have approved such additional expenditures by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the certificate by the Consulting Engineers, that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increase expenditures for operation and maintenance to the Authority, the Council, the BPH and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her, within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds, or anyone acting for and in behalf of such Holder of any Bonds.

**Section 3.** The Issuer does hereby authorize, ratify, approve and accept the forms of the Loan Agreements, including all schedules and exhibits attached thereto, copies of which have been presented to this meeting and are incorporated herein by reference, and the execution and delivery by the Mayor of the Loan Agreements for each of the three series of Series 2000 Bonds, and the performance of the obligations contained therein, on behalf of the Issuer are hereby authorized, approved and directed. The price of the Series 2000 Bonds shall be 100% of par value, there being no interest accrued thereon. The proceeds of the Series 2000A Bonds shall be advanced from time to time as requisitioned by the Issuer, and at closing there shall be requisitioned and advanced a

portion of the proceeds in the amount of \$664,237, being more than a de minimis amount. The proceeds of the Series 2000B Bonds shall be advanced from time to time as requisitioned by the Issuer, and at closing there shall be requisitioned and advanced a portion of the proceeds in the amount of \$680,942, being more than a de minimis amount. The entire proceeds of the Series 2000C Bonds shall be advanced at closing. The Issuer hereby affirms all covenants and representations made in the Loan Agreements and in the respective applications to the BPH, the Council and the Authority.

**Section 4.** The Issuer does hereby appoint and designate One Valley Bank, National Association, Charleston, West Virginia, as Registrar for the Series 2000 Bonds (the "Registrar") and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Series 2000 Bonds, by and between the Issuer and the Registrar, in substantially the form attached hereto, and the execution and delivery by the Mayor of the Registrar's Agreement, and the performance of the obligations contained therein, on behalf of the Issuer are hereby authorized, approved and directed.

**Section 5.** The Issuer does hereby appoint and direct the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Series 2000 Bonds.

**Section 6.** The Issuer does hereby appoint Jefferson Security Bank, Martinsburg, West Virginia, as Depository Bank under the Ordinance.

**Section 7.** The Series 2000A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2000A Bonds Sinking Fund as capitalized interest.

**Section 8.** The Series 2000A Bonds proceeds in the amount of \$459,802 shall be deposited in a Series 2000A Bonds Reserve Account.

**Section 9.** The Series 2000A Bonds proceeds in the amount of \$200,019 shall be deposited in a Series 2000B Bonds Reserve Account.

**Section 10.** The Series 2000B Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2000B Bonds Sinking Fund as capitalized interest.

**Section 11.** The Series 2000B Bonds proceeds in the amount of \$-0- shall be deposited in a Series 2000B Bonds Reserve Account.

**Section 12.** The Series 2000C Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2000C Bonds Sinking Fund as capitalized interest.

**Section 13.** The Series 2000C Bonds proceeds in the amount of \$128,932 shall be deposited in a Series 2000C Bonds Reserve Account.

**Section 14.** The remaining proceeds of the Series 2000A Bonds shall be deposited in the Series 2000A Bonds Construction Trust Fund, as received from time to time for payment of Costs of the Project, including costs of issuance of the Series 2000A Bonds and the reimbursement to the Issuer of any such Costs paid by the Issuer.

**Section 15.** The remaining proceeds of the Series 2000B Bonds shall be deposited in the Series 2000B Bonds Construction Trust Fund, as received from time to time for payment of Costs of the Project, including the costs of issuance of the Series 2000B Bonds and the reimbursement to the Issuer of any such Costs paid by the Issuer.

**Section 16.** The remaining proceeds of the Series 2000C Bonds shall be deposited in the Series 2000C Bonds Construction Trust Fund for payment of Costs of the Project, including the costs of issuance of the Series 2000C Bonds and the reimbursement to the Issuer of any such Costs paid by the Issuer.

**Section 17.** The Mayor, the City Manager and Recorder are hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates required or desirable in connection with the Series 2000 Bonds hereby and by the Ordinance approved and provided for, to the end that the Series 2000 Bonds may be delivered to the Authority pursuant to the Loan Agreements on or about September 27, 2000, or as soon thereafter as practicable.

**Section 18.** The acquisition and construction of the Project and the financing thereof with the proceeds of the Series 2000 Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

**Section 19.** The Issuer hereby determines that it is in the best interest of the Issuer to invest all monies in the funds and accounts established by the Ordinance held by the Depository Bank in Qualified Investments as directed in writing by the Mayor to the Depository Bank, and therefore the Issuer hereby authorizes and directs the Depository Bank to take such actions as may be necessary to cause such monies to be invested in such Qualified Investments, as directed by the Mayor. Monies in the Series 2000 Bonds Sinking Funds and the Series 2000 Bonds Reserve Accounts shall be invested by the Municipal Bond Commission in the West Virginia Consolidated Fund.

**Section 20.** The Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2000A Bonds as may be necessary in order to maintain the status of the Series 2000A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2000A Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority, the Council or the BPH, as the case may be, from which the proceeds of the Series 2000A Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall

be deemed necessary by the Issuer, or requested by the Authority, the Council or the BPH, to ensure compliance with the covenants and agreements set forth in this Section 20, regardless of whether such actions may be contrary to any of the provisions of the Bond Legislation.

**Section 21.** The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the proceeds of the Series 2000B Bonds and Series 2000C Bonds which would cause such Bonds to be “arbitrage bonds” under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to such Bonds) so that the interest on such 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 22.** In accordance with Section 148(f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that the Series 2000B Bonds and Series 2000C Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the Net Proceeds of the Series 2000B Bonds and Series 2000C Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds as defined in Section 141 of the Code) issued by the Issuer during the calendar year in which the Series 2000B Bonds and Series 2000C Bonds are issued does not and will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations promulgated thereunder. For purposes of this Section 22 and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section 22 and Section 148(f)(4)(D) of the Code, be treated as not issued by such governmental unit, all obligations issued by a subordinate entity shall, for purposes of applying this Section 22 and Section 148(f)(4)(D) of the Code to any other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefitting thereby shall be treated as one issuer.

**Section 23.** All contracts relating to the financing, acquisition and construction of the Project are hereby approved and the Mayor is hereby authorized and directed to execute and deliver all such contracts.

Section 24. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 25<sup>th</sup> day of September, 2000.

CITY OF MARTINSBURG

  
\_\_\_\_\_  
Mayor

Section 24. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 25<sup>th</sup> day of September, 2000.

CITY OF MARTINSBURG

  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the City Council of the City of Martinsburg on the 25th day of September, 2000.

Dated: September 27, 2000.

[SEAL]

Sharon A. Lue  
Recorder

DWTRF  
(4/7/00)

## LOAN AGREEMENT

THIS DRINKING WATER TREATMENT REVOLVING FUND LOAN AGREEMENT (the "Loan Agreement"), made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting under the direction of the WEST VIRGINIA BUREAU FOR PUBLIC HEALTH, a division of the West Virginia Department of Health and Human Resources (the "BPH"), and the local entity designated below (the "Local Entity").

CITY OF MARTINSBURG (Series 2000 A)  
(Local Entity)

### WITNESSETH:

WHEREAS, the United States Congress under Section 1452 of the Safe Drinking Water Act, as amended (the "Safe Drinking Water Act"), has provided for capitalization grants to be awarded to states for the express purpose of establishing and maintaining drinking water treatment revolving funds for the construction, acquisition and improvement of drinking water systems;

WHEREAS, pursuant to the provisions of Chapter 16, Article 13C of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a drinking water treatment revolving fund program (the "Program") to direct the distribution of loans to eligible Local Entities pursuant to the Safe Drinking Water Act;

WHEREAS, under the Act the BPH 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 BPH has been awarded capitalization grants to partially fund the Program;

WHEREAS, the Act establishes a permanent perpetual fund known as the "West Virginia Drinking Water Treatment Revolving Fund" (hereinafter the "Fund"), which fund is to be administered and managed by the Authority under the direction of the BPH;

WHEREAS, pursuant to the Act, the Authority and BPH are empowered to make loans from the Fund to Local Entities for the acquisition or construction of drinking water projects by such Local Entities, all subject to such provisions and limitations as are contained in the Safe Drinking Water Act and the Act;

WHEREAS, the Local Entity constitutes a local entity as defined by the Act;

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

WHEREAS, the Local Entity is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a drinking water 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 Entity;

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

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

WHEREAS, having reviewed the Application and the Fund having available sufficient funds therefor, the Authority and BPH are willing to lend the Local Entity the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Local Entity with moneys held in the Fund, subject to the Local Entity's satisfaction of certain legal and other requirements of the Program.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Local Entity, BPH 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 entity," and "project" have the definitions and meanings ascribed to them in the Act or in the DWTRF Regulations.

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

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

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

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

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

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

1.8 "Program" means the drinking water facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Safe Drinking Water Act and administered by BPH.

1.9 "Project" means the drinking water project hereinabove referred to, to be constructed or being constructed by the Local Entity in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Local Entity 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 "DWTRF Regulations" means the regulations set forth in the West Virginia Code of State Regulations.

1.11 "System" means the drinking water system owned by the Local Entity, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

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

## ARTICLE II

### The Project and the System

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

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and the Local Act, the Local Entity 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 Entity 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 Entity, 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 BPH and the Authority.

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

2.5 The Local Entity shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Local Entity shall permit the Authority and BPH, 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 Entity shall submit to the Authority and BPH such documents and information as it may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Local Entity agrees that it will permit the Authority and BPH and their respective agents to have access to the records of the Local Entity 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 Entity 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 Entity 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 BPH and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Local Entity, the Local Entity or (at the option of the Local Entity) 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 Entity, 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 Entity on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Entity 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 Entity shall provide and maintain competent and adequate engineering services satisfactory to the Authority and BPH 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, BPH and the Local Entity 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 Entity shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the DWTRF Regulations, to it within 60 days of the completion of the Project. The Local Entity shall notify BPH in writing of such receipt.

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

this Loan Agreement. The Local Entity shall notify BPH in writing of the certified operator employed at the 50% completion stage.

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

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

### ARTICLE III

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

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

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

(c) The Local Entity 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 Entity shall either have received bids or entered into contracts for the construction of the Project, which are in an amount and otherwise compatible with the plan of financing described in the Application; provided, that, if the Loan will refund an interim construction financing, the Local Entity 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 BPH shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit C;

(e) The Local Entity 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 BPH shall have received a certificate of the Consulting Engineers to such effect;

(f) The Local Entity 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 BPH shall have received an opinion of counsel to the Local Entity, which may be local counsel to the Local Entity, bond counsel or special PSC counsel but must be satisfactory to the Authority and BPH, to such effect;

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

(h) The Local Entity 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 BPH shall have received an opinion of counsel to the Local Entity, which may be local counsel to the Local Entity, bond counsel or special PSC counsel but must be satisfactory to the Authority and BPH, 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 BPH shall have received a certificate of the accountant for the Local Entity, or such other person or firm experienced in the finances of local entities and satisfactory to the Authority and BPH, 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 BPH shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of drinking water projects and satisfactory to the Authority and BPH, to such effect, such certificate to be in form and substance satisfactory to the Authority and BPH, and evidence satisfactory to the Authority and BPH of such irrevocably committed grants.

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

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Entity 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, BPH and the Local Entity. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority.

3.5 The Local Entity understands and acknowledges that it is one of several local entities which have applied to the Authority and BPH for loans from the Fund to finance drinking water projects and that the obligation of the Authority to make any such loan is subject to the Local Entity's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing and to the requirements of the Program. The Local Entity 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 execution of this Loan Agreement, the Authority may purchase the bonds of other local entities set out in the State Project Priority List, as defined in the DWTRF Regulations. The Local Entity further specifically recognizes that all loans will be originated in conjunction with the DWTRF Regulations and with the prior approval of BPH.

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

#### ARTICLE IV

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

4.1 The Local Entity shall, as one of the conditions of the Authority and BPH to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of

the Local Entity 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 Entity 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 gross or net revenues, as applicable, 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 Entity will complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or the DWTRF Regulations, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized 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 the 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 Entity 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 BPH;

(vi) That the Local Entity 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 Entity 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 Entity 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 Entity will not grant any franchise to provide any services which would compete with the System;

(xi) That the Local Entity shall annually, within six months of the end of the fiscal year, 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 BPH. If the Local Entity receives \$300,000 or more (in federal funds) in a fiscal year, the audit shall be obtained in accordance with the Single Audit Act (as amended from time to time) and the applicable OMB Circular (or any successor thereto). Financial statement audits are required once all funds have been received by the Local Entity. The audit shall include a statement that the Local Entity is in compliance with the terms and provisions of the Local Act and this Loan Agreement and that the Local Entity's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Local Entity 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 BPH 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 Entity 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 funding of such Local Entity, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and BPH, 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 Entity may authorize redemption of the Local Bonds with 30 days written notice to BPH and 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 Entity 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 Entity shall complete the Monthly Payment Form, attached hereto as Exhibit E 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 Entity 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 Entity 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 BPH, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and BPH 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 Entity shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate its services to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore such services until all delinquent charges for the services of the System have been fully paid; and

(xxi) That the Local Entity shall submit all proposed change orders to the BPH for written approval. The Local Entity shall obtain the written approval of the BPH 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 Entity shall obtain the written approval of the BPH before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

The Local Entity 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 F.

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

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the Authority monthly as required by the Local Entity 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 Entity, the BPH 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 DWTRF 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 Entity. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

4.5 As provided by the DWTRF Regulations, the Local Entity agrees to pay from time to time, if required by the Authority and BPH, the Local Entity's allocable share of the reasonable administrative expenses of the BPH and the Authority relating to the Program. Such administrative expenses shall be determined by the BPH and the Authority and shall include, without limitation, Program expenses, legal fees paid by the BPH and the Authority and fees paid for any bonds or notes to be issued by the Authority for contribution to the Fund.

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

## ARTICLE V

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

5.1 The Local Entity hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Local Entity hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority

to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

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

5.3 In the event the Local Entity defaults in any payment due to the Authority pursuant to Section 4.2 hereof, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Local Entity hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Local Entity, 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 Entity

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

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

made to the Authority and BPH by the Local Entity in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Local Entity 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 DWTRF Regulations or this Loan Agreement.

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

6.4 The Local Entity 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 Entity fails to make any such rebates as required, then the Local Entity 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 BPH may at any time, in their sole discretion, cause the rebate calculations prepared by or on behalf of the Local Entity to be monitored or cause the rebate calculations for the Local Entity to be prepared, in either case at the expense of the Local Entity.

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

## ARTICLE VII

### Miscellaneous

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

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

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

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

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

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

7.7 This Loan Agreement shall terminate upon the earlier of:

(i) written notice of termination to the Local Entity from either the Authority or BPH;

(ii) the end of ninety (90) days after the date of execution hereof by the Authority if the Local Entity has failed to deliver the Local Bonds to the Authority;

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

(iv) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Local Entity to the Authority or BPH.

In the event funds are not available to make all of the Loan, the responsibility of the Authority and BPH to make all the Loan is terminated; provided further that the obligation of the Local Entity to repay the outstanding amount of the Loan made by the Authority and BPH is not terminated due to such non-funding on any balance of the Loan. The BPH agrees to use its best efforts to have the amount contemplated under this Loan Agreement included in its budget. Non-funding of the Loan shall not be considered an event of default under this Loan Agreement.

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

CITY OF MARTINSBURG

[Name of Local Entity]

(SEAL)

By: George Karow

Its: Mayor

Attest:

Date: September 27, 2000

Maranda Lurie

Its Recorder

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

(SEAL)

By: Daniel B. Gombosky

Its: Director

Attest:

Date: September 27, 2000

Barbara B Meadows

Secretary-Treasurer

000832/00520

4/7/00

## EXHIBIT A

[Form of Monthly Financial Report]

[Name of Local Entity]

[Name of Bond Issue]

Fiscal Year - \_\_\_\_\_

Report Month: \_\_\_\_\_

|    | <u>ITEM</u>                                                               | <u>CURRENT<br/>MONTH</u> | <u>TOTAL<br/>YEAR TO<br/>DATE</u> | <u>BUDGET YEAR<br/>TO DATE</u> | <u>BUDGET<br/>YEAR MINUS<br/>YEAR TO DATE</u> |
|----|---------------------------------------------------------------------------|--------------------------|-----------------------------------|--------------------------------|-----------------------------------------------|
| 1. | Gross Revenues<br>Collected                                               |                          |                                   |                                |                                               |
| 2. | Operating<br>Expenses                                                     |                          |                                   |                                |                                               |
| 3. | Other Bond<br>Debt Payments<br>(including<br>Reserve Account<br>Deposits) |                          |                                   |                                |                                               |
| 4. | DWTRF Bond Payments<br>(include Reserve Account<br>Deposits)              |                          |                                   |                                |                                               |
| 5. | Renewal and<br>Replacement Fund<br>Deposit                                |                          |                                   |                                |                                               |

Witnesseth my signature this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
[Name of Local Entity]

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

### Instructions for Completing Monthly Financial Report

1. You will need a copy of the current fiscal year budget adopted by the Local Entity 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 ( $1200/12$ ). This is the incremental amount for the Budget Year to Date column.
2. In Item 2, provide the amount of actual operating expenses for the current month and the total amount year to date in the respective columns. The SRF 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.
3. In Item 3, provide the principal, interest and reserve account payments for all the outstanding bonds of the Local Entity other than this Loan.
4. In Item 4, provide the principal, interest and reserve account payments for this Loan. You need to call the Municipal Bond Commission for the exact amount of these payments and when they begin.
5. In Item 5, 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 Items 3 and 4. If gross revenues are \$12,000, the Renewal and Replacement Fund should have an amount of \$300 (2.5% of \$12,000), LESS the amount of all reserve account payments in Items 3 & 4. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Entity.
6. The Local Entity must complete the Monthly Financial Report and forward it to the BPH by the 10<sup>th</sup> day of each month, commencing on the date contracts are executed for the construction of the Project and for 2 years following the completion of the Project. BPH will notify the Local Entity when the Monthly Financial Report no longer needs to be filed.

## **EXHIBIT B**

### **PAYMENT REQUISITION FORM**

## EXHIBIT C

### FORM OF CERTIFICATE OF CONSULTING ENGINEER

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

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

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

1. My firm is engineer for the acquisition and construction of \_\_\_\_\_ to the \_\_\_\_\_ system (the "Project") of \_\_\_\_\_ (the "Issuer"), to be constructed primarily in \_\_\_\_\_ County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the bond \_\_\_\_\_ adopted or enacted by the Issuer on \_\_\_\_\_, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), 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 BPH and any change orders approved by the Issuer, BPH and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least \_\_\_\_\_ years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in Schedule A attached hereto as Exhibit A, and my firm<sup>1</sup> has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been \_\_\_\_\_.

<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".

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 BPH 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 Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by BPH; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

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

[SEAL]

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

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

<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 D**

### **Special Conditions**

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

## EXHIBIT E

[Monthly Payment Form]

West Virginia Water Development Authority  
180 Association Drive  
Charleston, WV 25311-1511

Re: [Name of bond issue]

Ladies and Gentlemen:

The following deposits were made to the West Virginia Municipal Bond Commission

on behalf of \_\_\_\_\_ on \_\_\_\_\_.  
[Local Entity] [Date]

Sinking Fund:

Interest \$ \_\_\_\_\_

Principal \$ \_\_\_\_\_

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

Reserve Account: \$ \_\_\_\_\_

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

\_\_\_\_\_  
[Name of Local Entity]

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

Enclosure: wire transfer form

## EXHIBIT F

[Opinion of Bond Counsel for Local Entity]

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority  
180 Association Drive  
Charleston, WV 25311-1511

West Virginia Bureau for Public Health  
815 Quarrier Street, Suite 418  
Charleston, WV 25301-2616

Ladies and Gentlemen:

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

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

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

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

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

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

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

3. The Local Entity 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 Entity and constitute valid and binding obligations of the Local Entity enforceable against the Local Entity in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Local Entity to the Authority and are valid and legally enforceable and binding special obligations of the Local Entity, payable from the gross or net revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the gross or net 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 executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

## SCHEDULE X

### DESCRIPTION OF LOCAL BONDS

|                                 |                     |
|---------------------------------|---------------------|
| Principal Amount of Local Bonds | \$ <u>7,564,000</u> |
| Purchase Price of Local Bonds   | \$ <u>7,564,000</u> |

The Local Bonds shall bear no interest from the date of delivery to and including February 28, 2002. Commencing June 1, 2002, interest on the Local Bonds is payable quarterly, at a rate of 2 % per annum. Commencing June 1, 2002, principal of the Local Bonds is payable quarterly, with an administrative fee of 1 %. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Entity 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 Entity 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 Entity shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

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

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

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

Combined Waterworks and Sewerage System Refunding Revenue Bonds, Series 1995, dated September 1, 1995, originally issued in the aggregate principal amount of \$3,645,000.

## City of Martinsburg (West Virginia)

DWTRF Loan of \$7,564,000

20 Years, 2% Interest Rate, 1% Administrative Fee

Closing Date: September 27, 2000

## DEBT SERVICE SCHEDULE

| Date       | Principal | Coupon | Interest  | Total P+I  |
|------------|-----------|--------|-----------|------------|
| 12/01/2000 | -         | -      | -         | -          |
| 3/01/2001  | -         | -      | -         | -          |
| 6/01/2001  | -         | -      | -         | -          |
| 9/01/2001  | -         | -      | -         | -          |
| 12/01/2001 | -         | -      | -         | -          |
| 3/01/2002  | -         | -      | -         | -          |
| 6/01/2002  | 77,130.00 | 2.000% | 37,820.00 | 114,950.00 |
| 9/01/2002  | 77,516.00 | 2.000% | 37,434.35 | 114,950.35 |
| 12/01/2002 | 77,904.00 | 2.000% | 37,046.77 | 114,950.77 |
| 3/01/2003  | 78,293.00 | 2.000% | 36,657.25 | 114,950.25 |
| 6/01/2003  | 78,685.00 | 2.000% | 36,265.79 | 114,950.79 |
| 9/01/2003  | 79,078.00 | 2.000% | 35,872.36 | 114,950.36 |
| 12/01/2003 | 79,473.00 | 2.000% | 35,476.97 | 114,949.97 |
| 3/01/2004  | 79,871.00 | 2.000% | 35,079.61 | 114,950.61 |
| 6/01/2004  | 80,270.00 | 2.000% | 34,680.25 | 114,950.25 |
| 9/01/2004  | 80,671.00 | 2.000% | 34,278.90 | 114,949.90 |
| 12/01/2004 | 81,075.00 | 2.000% | 33,875.55 | 114,950.55 |
| 3/01/2005  | 81,480.00 | 2.000% | 33,470.17 | 114,950.17 |
| 6/01/2005  | 81,888.00 | 2.000% | 33,062.77 | 114,950.77 |
| 9/01/2005  | 82,297.00 | 2.000% | 32,653.33 | 114,950.33 |
| 12/01/2005 | 82,709.00 | 2.000% | 32,241.85 | 114,950.85 |
| 3/01/2006  | 83,122.00 | 2.000% | 31,828.30 | 114,950.30 |
| 6/01/2006  | 83,538.00 | 2.000% | 31,412.69 | 114,950.69 |
| 9/01/2006  | 83,955.00 | 2.000% | 30,995.00 | 114,950.00 |
| 12/01/2006 | 84,375.00 | 2.000% | 30,575.23 | 114,950.23 |
| 3/01/2007  | 84,797.00 | 2.000% | 30,153.35 | 114,950.35 |
| 6/01/2007  | 85,221.00 | 2.000% | 29,729.37 | 114,950.37 |
| 9/01/2007  | 85,647.00 | 2.000% | 29,303.26 | 114,950.26 |
| 12/01/2007 | 86,075.00 | 2.000% | 28,875.03 | 114,950.03 |
| 3/01/2008  | 86,506.00 | 2.000% | 28,444.65 | 114,950.65 |
| 6/01/2008  | 86,938.00 | 2.000% | 28,012.12 | 114,950.12 |
| 9/01/2008  | 87,373.00 | 2.000% | 27,577.43 | 114,950.43 |
| 12/01/2008 | 87,810.00 | 2.000% | 27,140.57 | 114,950.57 |
| 3/01/2009  | 88,249.00 | 2.000% | 26,701.52 | 114,950.52 |
| 6/01/2009  | 88,690.00 | 2.000% | 26,260.27 | 114,950.27 |
| 9/01/2009  | 89,134.00 | 2.000% | 25,816.82 | 114,950.82 |
| 12/01/2009 | 89,579.00 | 2.000% | 25,371.15 | 114,950.15 |
| 3/01/2010  | 90,027.00 | 2.000% | 24,923.26 | 114,950.26 |
| 6/01/2010  | 90,477.00 | 2.000% | 24,473.12 | 114,950.12 |
| 9/01/2010  | 90,930.00 | 2.000% | 24,020.74 | 114,950.74 |
| 12/01/2010 | 91,384.00 | 2.000% | 23,566.09 | 114,950.09 |
| 3/01/2011  | 91,841.00 | 2.000% | 23,109.17 | 114,950.17 |
| 6/01/2011  | 92,300.00 | 2.000% | 22,649.96 | 114,949.96 |
| 9/01/2011  | 92,762.00 | 2.000% | 22,188.46 | 114,950.46 |
| 12/01/2011 | 93,226.00 | 2.000% | 21,724.65 | 114,950.65 |
| 3/01/2012  | 93,692.00 | 2.000% | 21,258.52 | 114,950.52 |

**City of Martinsburg (West Virginia)**  
*DWTRF Loan of \$7,564,000*  
*20 Years, 2% Interest Rate, 1% Administrative Fee*  
*Closing Date: September 27, 2000*

**DEBT SERVICE SCHEDULE**

| Date         | Principal           | Coupon   | Interest            | Total P+I             |
|--------------|---------------------|----------|---------------------|-----------------------|
| 6/01/2012    | 94,160.00           | 2.000%   | 20,790.06           | 114,950.06            |
| 9/01/2012    | 94,631.00           | 2.000%   | 20,319.26           | 114,950.26            |
| 12/01/2012   | 95,104.00           | 2.000%   | 19,846.11           | 114,950.11            |
| 3/01/2013    | 95,580.00           | 2.000%   | 19,370.59           | 114,950.59            |
| 6/01/2013    | 96,058.00           | 2.000%   | 18,892.69           | 114,950.69            |
| 9/01/2013    | 96,538.00           | 2.000%   | 18,412.40           | 114,950.40            |
| 12/01/2013   | 97,021.00           | 2.000%   | 17,929.71           | 114,950.71            |
| 3/01/2014    | 97,506.00           | 2.000%   | 17,444.60           | 114,950.60            |
| 6/01/2014    | 97,993.00           | 2.000%   | 16,957.07           | 114,950.07            |
| 9/01/2014    | 98,483.00           | 2.000%   | 16,467.11           | 114,950.11            |
| 12/01/2014   | 98,976.00           | 2.000%   | 15,974.69           | 114,950.69            |
| 3/01/2015    | 99,471.00           | 2.000%   | 15,479.81           | 114,950.81            |
| 6/01/2015    | 99,968.00           | 2.000%   | 14,982.46           | 114,950.46            |
| 9/01/2015    | 100,468.00          | 2.000%   | 14,482.62           | 114,950.62            |
| 12/01/2015   | 100,970.00          | 2.000%   | 13,980.28           | 114,950.28            |
| 3/01/2016    | 101,475.00          | 2.000%   | 13,475.43           | 114,950.43            |
| 6/01/2016    | 101,982.00          | 2.000%   | 12,968.05           | 114,950.05            |
| 9/01/2016    | 102,492.00          | 2.000%   | 12,458.14           | 114,950.14            |
| 12/01/2016   | 103,005.00          | 2.000%   | 11,945.68           | 114,950.68            |
| 3/01/2017    | 103,520.00          | 2.000%   | 11,430.66           | 114,950.66            |
| 6/01/2017    | 104,037.00          | 2.000%   | 10,913.06           | 114,950.06            |
| 9/01/2017    | 104,558.00          | 2.000%   | 10,392.87           | 114,950.87            |
| 12/01/2017   | 105,080.00          | 2.000%   | 9,870.08            | 114,950.08            |
| 3/01/2018    | 105,606.00          | 2.000%   | 9,344.68            | 114,950.68            |
| 6/01/2018    | 106,134.00          | 2.000%   | 8,816.65            | 114,950.65            |
| 9/01/2018    | 106,664.00          | 2.000%   | 8,285.98            | 114,949.98            |
| 12/01/2018   | 107,198.00          | 2.000%   | 7,752.66            | 114,950.66            |
| 3/01/2019    | 107,734.00          | 2.000%   | 7,216.67            | 114,950.67            |
| 6/01/2019    | 108,272.00          | 2.000%   | 6,678.00            | 114,950.00            |
| 9/01/2019    | 108,814.00          | 2.000%   | 6,136.64            | 114,950.64            |
| 12/01/2019   | 109,358.00          | 2.000%   | 5,592.57            | 114,950.57            |
| 3/01/2020    | 109,905.00          | 2.000%   | 5,045.78            | 114,950.78            |
| 6/01/2020    | 110,454.00          | 2.000%   | 4,496.26            | 114,950.26            |
| 9/01/2020    | 111,006.00          | 2.000%   | 3,943.99            | 114,949.99            |
| 12/01/2020   | 111,561.00          | 2.000%   | 3,388.96            | 114,949.96            |
| 3/01/2021    | 112,119.00          | 2.000%   | 2,831.15            | 114,950.15            |
| 6/01/2021    | 112,680.00          | 2.000%   | 2,270.56            | 114,950.56            |
| 9/01/2021    | 113,243.00          | 2.000%   | 1,707.16            | 114,950.16            |
| 12/01/2021   | 113,809.00          | 2.000%   | 1,140.94            | 114,949.94            |
| 3/01/2022    | 114,379.00          | 2.000%   | 571.90              | 114,950.90            |
| <b>Total</b> | <b>7,564,000.00</b> | <b>-</b> | <b>1,632,030.63</b> | <b>9,196,030.63 *</b> |

\*Plus \$10,200 one-percent administrative fee paid quarterly. Total fee paid over the life of the loan is \$816,000.

LOAN AGREEMENT

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

CITY OF MARTINSBURG  
(Governmental Agency)

W I T N E S S E T H:

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

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

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

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

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

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

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

## ARTICLE I

### Definitions

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

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

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, "Consulting Engineers" shall mean the West Virginia Division of Environmental Protection, or any successor thereto.

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

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

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

1.7 "Local Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the

Loan and to be purchased by the Authority, all in accordance with the provisions of this Loan Agreement.

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

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

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

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

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

## ARTICLE II

### The Project and the System

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

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

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property or any interest therein is approved by the Authority and Council.

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

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

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

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

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

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

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

2.10 The Governmental Agency shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Governmental Agency shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of this Loan Agreement.

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

2.12 The Governmental Agency, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 10<sup>th</sup> of each month to the Authority and Council.

### ARTICLE III

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

3.1 The agreement of the Authority and Council to make the Loan is subject to the Governmental Agency's fulfillment, to the satisfaction of the Authority and the Council, of each and all of those certain conditions precedent on or before the delivery date for the

Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

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

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

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

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

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the 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 the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority and the Council, to such effect;

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

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

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

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

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

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

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

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

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

#### ARTICLE IV

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

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

(a) That the gross revenues of the System shall always be used for purposes of the System. Such gross revenues shall 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 (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit or surety) 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 Governmental Agency has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the gross or net revenues of the System, as more fully set forth in Schedule X attached hereto and 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 Governmental Agency shall complete the Project and operate and maintain the System in good condition;

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

(v) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, 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 the Council; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

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

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

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

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

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

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

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

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

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

(xvii) That the Governmental Agency 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 Governmental Agency shall complete the Monthly Payment Form, attached hereto as Exhibit D 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 Governmental Agency 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 Governmental Agency shall take any and all action, or shall refrain from taking any action, as shall be deemed necessary by the Authority to

maintain the exclusion from gross income for federal income tax purposes of interest on the State's general obligation bonds or any bonds secured by the Local Bonds;

(xx) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached hereto as Exhibit A, 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 the Council, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the Council 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;

(xxi) That the Governmental Agency 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 Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider;

(xxii) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Internal Revenue Code of 1986, as amended) from time to time as the Authority may request;

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

(xxiv) That the Governmental Agency shall list the funding provided by the Authority and the Council in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project.

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

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and subject only to such reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority and the Council.

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

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

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

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

## ARTICLE V

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

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

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

charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Loan Agreement.

5.3 In the event the Governmental Agency defaults in the payment due to the Authority pursuant to Section 4.2 hereof, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

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

## ARTICLE VI

### Other Agreements of the Governmental Agency

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

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

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

6.4 The Governmental Agency hereby agrees to give the Authority and the Council 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.

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

## ARTICLE VII

### Miscellaneous

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

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

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

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

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

7.6 No waiver by either party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of

the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

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

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

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

7.10 This Loan Agreement shall terminate upon the earlier of:

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

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

CITY OF MARTINSBURG

\_\_\_\_\_  
(SEAL)

By: *Greg Karoc*  
Its: Mayor

Attest:

Date: 9.27.00

*Sharon T. Zline*  
Its: Recorder

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

(SEAL)

By: *Daniel B. Lynch*  
Its: Director

Attest:

Date: 9-27-00

*Barbara B. Meadows*  
Its: Secretary-Treasurer

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

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

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

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

1. My firm is engineer for the acquisition and construction of \_\_\_\_\_ to the \_\_\_\_\_ system (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 meanings set forth in the bond \_\_\_\_\_ adopted or enacted by the Issuer on \_\_\_\_\_, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), 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 [DEP/BPH/PSC] and any change orders approved by the Issuer, the Council 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 the 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 reflect the Project as approved by the [DEP/BPH/PSC] 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 Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project set forth in the Schedule B attached hereto and approved by the Council; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Costs of Financing" for the Project.

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

[SEAL]

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

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

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

## EXHIBIT B

[Opinion of Bond Counsel for Governmental Agency]

[To Be Dated as of Date of Loan Closing]

West Virginia Infrastructure and  
Jobs Development Council  
980 One Valley Square  
Charleston, West Virginia 25301

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

Ladies and Gentlemen:

We are bond counsel to \_\_\_\_\_ (the  
"Governmental Agency"), a \_\_\_\_\_.

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

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

We have also examined the applicable provisions of \_\_\_\_\_ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond \_\_\_\_\_ duly adopted or enacted by the Governmental Agency on \_\_\_\_\_, as supplemented by the supplemental resolution duly adopted by the Governmental Agency on \_\_\_\_\_ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the

Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

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

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

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

3. The Governmental Agency 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 Governmental Agency and constitute valid and binding obligations of the Governmental Agency enforceable against the Governmental Agency in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Governmental Agency to the Authority and are valid and legally enforceable and binding special obligations of the Governmental Agency, 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,

## EXHIBIT C

[Form of Monthly Financial Report]

[Name of Governmental Agency]

[Name of Bond Issue]

Fiscal Year - \_\_\_\_

Report Month: \_\_\_\_

|    | <u>ITEM</u>                                                               | <u>CURRENT<br/>MONTH</u> | <u>TOTAL<br/>YEAR TO<br/>DATE</u> | <u>BUDGET YEAR<br/>TO DATE</u> | <u>BUDGET<br/>YEAR MINUS<br/>YEAR TO DATE</u> |
|----|---------------------------------------------------------------------------|--------------------------|-----------------------------------|--------------------------------|-----------------------------------------------|
| 1. | Gross Revenues<br>Collected                                               |                          |                                   |                                |                                               |
| 2. | Operating<br>Expenses                                                     |                          |                                   |                                |                                               |
| 3. | Other Bond<br>Debt Payments<br>(including<br>Reserve Account<br>Deposits) |                          |                                   |                                |                                               |
| 4. | Bond Payments<br>(include Reserve Account<br>Deposits)                    |                          |                                   |                                |                                               |
| 5. | Renewal and<br>Replacement Fund<br>Deposit                                |                          |                                   |                                |                                               |

WITNESSETH my signature this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[Name of Governmental Agency]

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

### Instructions for Completing Monthly Financial Report

1. You will need a copy of the current fiscal year budget adopted by the Governmental Agency 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 ( $1200/12$ ). This is the incremental amount for the Budget Year to Date column.
2. In Item 2, provide the amount of actual operating expenses for the current month and the total amount year to date in the respective columns. The SRF 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.
3. In Item 3, provide the principal, interest and reserve account payments for all the outstanding bonds of the Governmental Agency other than this Loan.
4. In Item 4, provide the principal, interest and reserve account payments for this Loan. You need to call the Municipal Bond Commission for the exact amount of these payments and when they begin.
5. In Item 5, 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 Items 3 and 4. If gross revenues are \$12,000, the Renewal and Replacement Fund should have an amount of \$300 (2.5% of \$12,000), LESS the amount of all reserve account payments in Items 3 & 4. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Governmental Agency.
6. The Governmental Agency must complete the Monthly Financial Report and forward it to the Council by the 10<sup>th</sup> day of each month, commencing on the date contracts are executed for the construction of the Project and for 2 years following the completion of the Project. The Council will notify the Governmental Agency when the Monthly Financial Report no longer needs to be filed.

## EXHIBIT D

### [Monthly Payment Form]

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

Re: [Name of bond issue]

Ladies and Gentlemen:

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

#### Sinking Fund:

Interest \$\_\_\_\_\_

Principal \$\_\_\_\_\_

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

Reserve Account: \$\_\_\_\_\_

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

[Name of Governmental Agency]

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

Enclosure: copy of check(s)

## SCHEDULE X

### DESCRIPTION OF LOCAL BONDS

|                                 |             |
|---------------------------------|-------------|
| Principal Amount of Local Bonds | \$3,000,000 |
| Purchase Price of Local Bonds   | \$3,000,000 |

The Local Bonds shall bear no interest from the date of delivery to and including March 1, 2002. Commencing June 1, 2002, interest on the Local Bonds is payable quarterly, at the rate of 3% per annum. Commencing June 1, 2002, principal of the Local Bonds is payable quarterly. 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 Governmental Agency shall submit its payments monthly to the Commission which will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority.

The Local Bonds are fully registered in the name of the Authority as to interest, if any, and principal and the Local Bonds shall grant the Authority a first lien on the gross or net revenues of the Governmental Agency's system as provided in the Local Act.

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

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

Combined Waterworks and Sewerage System Refunding Revenue Bonds,  
Series 1995, dated September 1, 1995, originally issued in the aggregate  
principal amount of \$3,645,000.

SCHEDULE Y

**City of Martinsburg (West Virginia)**

*Loan of \$3,000,000*

*20 Years, 3% Interest Rate*

*Closing Date: September 27, 2000*

**DEBT SERVICE SCHEDULE**

| Date       | Principal | Coupon | Interest  | Total P+I |
|------------|-----------|--------|-----------|-----------|
| 12/01/2000 | -         | -      | -         | -         |
| 3/01/2001  | -         | -      | -         | -         |
| 6/01/2001  | -         | -      | -         | -         |
| 9/01/2001  | -         | -      | -         | -         |
| 12/01/2001 | -         | -      | -         | -         |
| 3/01/2002  | -         | -      | -         | -         |
| 6/01/2002  | 27,505.00 | 3.000% | 22,500.00 | 50,005.00 |
| 9/01/2002  | 27,711.00 | 3.000% | 22,293.71 | 50,004.71 |
| 12/01/2002 | 27,919.00 | 3.000% | 22,085.88 | 50,004.88 |
| 3/01/2003  | 28,128.00 | 3.000% | 21,876.49 | 50,004.49 |
| 6/01/2003  | 28,339.00 | 3.000% | 21,665.53 | 50,004.53 |
| 9/01/2003  | 28,552.00 | 3.000% | 21,452.99 | 50,004.99 |
| 12/01/2003 | 28,766.00 | 3.000% | 21,238.85 | 50,004.85 |
| 3/01/2004  | 28,982.00 | 3.000% | 21,023.10 | 50,005.10 |
| 6/01/2004  | 29,199.00 | 3.000% | 20,805.74 | 50,004.74 |
| 9/01/2004  | 29,418.00 | 3.000% | 20,586.74 | 50,004.74 |
| 12/01/2004 | 29,638.00 | 3.000% | 20,366.11 | 50,004.11 |
| 3/01/2005  | 29,861.00 | 3.000% | 20,143.82 | 50,004.82 |
| 6/01/2005  | 30,085.00 | 3.000% | 19,919.87 | 50,004.87 |
| 9/01/2005  | 30,310.00 | 3.000% | 19,694.23 | 50,004.23 |
| 12/01/2005 | 30,538.00 | 3.000% | 19,466.90 | 50,004.90 |
| 3/01/2006  | 30,767.00 | 3.000% | 19,237.87 | 50,004.87 |
| 6/01/2006  | 30,997.00 | 3.000% | 19,007.12 | 50,004.12 |
| 9/01/2006  | 31,230.00 | 3.000% | 18,774.64 | 50,004.64 |
| 12/01/2006 | 31,464.00 | 3.000% | 18,540.41 | 50,004.41 |
| 3/01/2007  | 31,700.00 | 3.000% | 18,304.43 | 50,004.43 |
| 6/01/2007  | 31,938.00 | 3.000% | 18,066.68 | 50,004.68 |
| 9/01/2007  | 32,177.00 | 3.000% | 17,827.15 | 50,004.15 |
| 12/01/2007 | 32,419.00 | 3.000% | 17,585.82 | 50,004.82 |
| 3/01/2008  | 32,662.00 | 3.000% | 17,342.68 | 50,004.68 |
| 6/01/2008  | 32,907.00 | 3.000% | 17,097.71 | 50,004.71 |
| 9/01/2008  | 33,154.00 | 3.000% | 16,850.91 | 50,004.91 |
| 12/01/2008 | 33,402.00 | 3.000% | 16,602.26 | 50,004.26 |
| 3/01/2009  | 33,653.00 | 3.000% | 16,351.74 | 50,004.74 |
| 6/01/2009  | 33,905.00 | 3.000% | 16,099.34 | 50,004.34 |
| 9/01/2009  | 34,160.00 | 3.000% | 15,845.06 | 50,005.06 |
| 12/01/2009 | 34,416.00 | 3.000% | 15,588.86 | 50,004.86 |
| 3/01/2010  | 34,674.00 | 3.000% | 15,330.74 | 50,004.74 |
| 6/01/2010  | 34,934.00 | 3.000% | 15,070.68 | 50,004.68 |
| 9/01/2010  | 35,196.00 | 3.000% | 14,808.68 | 50,004.68 |
| 12/01/2010 | 35,460.00 | 3.000% | 14,544.71 | 50,004.71 |
| 3/01/2011  | 35,726.00 | 3.000% | 14,278.76 | 50,004.76 |
| 6/01/2011  | 35,994.00 | 3.000% | 14,010.81 | 50,004.81 |
| 9/01/2011  | 36,264.00 | 3.000% | 13,740.86 | 50,004.86 |
| 12/01/2011 | 36,536.00 | 3.000% | 13,468.88 | 50,004.88 |
| 3/01/2012  | 36,810.00 | 3.000% | 13,194.86 | 50,004.86 |

SCHEDULE Y

**City of Martinsburg (West Virginia)**

*Loan of \$3,000,000*

*20 Years, 3% Interest Rate*

*Closing Date: September 27, 2000*

**DEBT SERVICE SCHEDULE**

| <b>Date</b>  | <b>Principal</b>    | <b>Coupon</b> | <b>Interest</b>     | <b>Total P+I</b>    |
|--------------|---------------------|---------------|---------------------|---------------------|
| 6/01/2012    | 37,086.00           | 3.000%        | 12,918.78           | 50,004.78           |
| 9/01/2012    | 37,364.00           | 3.000%        | 12,640.64           | 50,004.64           |
| 12/01/2012   | 37,644.00           | 3.000%        | 12,360.41           | 50,004.41           |
| 3/01/2013    | 37,927.00           | 3.000%        | 12,078.08           | 50,005.08           |
| 6/01/2013    | 38,211.00           | 3.000%        | 11,793.62           | 50,004.62           |
| 9/01/2013    | 38,498.00           | 3.000%        | 11,507.04           | 50,005.04           |
| 12/01/2013   | 38,786.00           | 3.000%        | 11,218.31           | 50,004.31           |
| 3/01/2014    | 39,077.00           | 3.000%        | 10,927.41           | 50,004.41           |
| 6/01/2014    | 39,370.00           | 3.000%        | 10,634.33           | 50,004.33           |
| 9/01/2014    | 39,666.00           | 3.000%        | 10,339.06           | 50,005.06           |
| 12/01/2014   | 39,963.00           | 3.000%        | 10,041.56           | 50,004.56           |
| 3/01/2015    | 40,263.00           | 3.000%        | 9,741.84            | 50,004.84           |
| 6/01/2015    | 40,565.00           | 3.000%        | 9,439.87            | 50,004.87           |
| 9/01/2015    | 40,869.00           | 3.000%        | 9,135.63            | 50,004.63           |
| 12/01/2015   | 41,175.00           | 3.000%        | 8,829.11            | 50,004.11           |
| 3/01/2016    | 41,484.00           | 3.000%        | 8,520.30            | 50,004.30           |
| 6/01/2016    | 41,795.00           | 3.000%        | 8,209.17            | 50,004.17           |
| 9/01/2016    | 42,109.00           | 3.000%        | 7,895.71            | 50,004.71           |
| 12/01/2016   | 42,425.00           | 3.000%        | 7,579.89            | 50,004.89           |
| 3/01/2017    | 42,743.00           | 3.000%        | 7,261.70            | 50,004.70           |
| 6/01/2017    | 43,063.00           | 3.000%        | 6,941.13            | 50,004.13           |
| 9/01/2017    | 43,386.00           | 3.000%        | 6,618.16            | 50,004.16           |
| 12/01/2017   | 43,712.00           | 3.000%        | 6,292.76            | 50,004.76           |
| 3/01/2018    | 44,040.00           | 3.000%        | 5,964.92            | 50,004.92           |
| 6/01/2018    | 44,370.00           | 3.000%        | 5,634.62            | 50,004.62           |
| 9/01/2018    | 44,703.00           | 3.000%        | 5,301.85            | 50,004.85           |
| 12/01/2018   | 45,038.00           | 3.000%        | 4,966.58            | 50,004.58           |
| 3/01/2019    | 45,376.00           | 3.000%        | 4,628.79            | 50,004.79           |
| 6/01/2019    | 45,716.00           | 3.000%        | 4,288.47            | 50,004.47           |
| 9/01/2019    | 46,059.00           | 3.000%        | 3,945.60            | 50,004.60           |
| 12/01/2019   | 46,404.00           | 3.000%        | 3,600.16            | 50,004.16           |
| 3/01/2020    | 46,752.00           | 3.000%        | 3,252.13            | 50,004.13           |
| 6/01/2020    | 47,103.00           | 3.000%        | 2,901.49            | 50,004.49           |
| 9/01/2020    | 47,456.00           | 3.000%        | 2,548.22            | 50,004.22           |
| 12/01/2020   | 47,812.00           | 3.000%        | 2,192.30            | 50,004.30           |
| 3/01/2021    | 48,171.00           | 3.000%        | 1,833.71            | 50,004.71           |
| 6/01/2021    | 48,532.00           | 3.000%        | 1,472.42            | 50,004.42           |
| 9/01/2021    | 48,896.00           | 3.000%        | 1,108.43            | 50,004.43           |
| 12/01/2021   | 49,263.00           | 3.000%        | 741.71              | 50,004.71           |
| 3/01/2022    | 49,632.00           | 3.000%        | 372.24              | 50,004.24           |
| <b>Total</b> | <b>3,000,000.00</b> | <b>-</b>      | <b>1,000,369.77</b> | <b>4,000,369.77</b> |

Ferris, Baker Watts, Incorporated  
Public Finance

File = IF City of Martinsburg.sf-9 14 00- SINGLE PURPOSE  
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## SCHEDULE Z

None.

WDA-LP II  
(4/6/00)

LOAN AGREEMENT

THIS LOAN AGREEMENT, made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), and the governmental agency designated below (the "Governmental Agency").

CITY OF MARTINSBURG (Series 2000 C)

(Governmental Agency)

WITNESSETH:

WHEREAS, pursuant to the provisions of Chapter 22C, Article 1 of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered to make loans to governmental agencies for the acquisition or construction of water development projects by such governmental agencies and to issue water development revenue bonds of the State of West Virginia (the "State") to finance, in whole or in part, by loans to governmental agencies, one or more water development projects, all subject to such provisions and limitations as are contained in the Act;

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

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a water development project, as defined by the Act, and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by revenue bonds issued by the Governmental Agency;

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

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

WHEREAS, having reviewed the Application and made all findings required by Section 5 of the Act and having available sufficient funds therefor, the Authority is willing to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with proceeds of certain water development revenue bonds of the State issued by the Authority pursuant to and in accordance with the provisions of the Act and a certain general revenue bond resolution adopted by the Board of the Authority (the "General Resolution"), as supplemented, subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Authority's water development loan program, known as Loan Program II (the "Program") as hereinafter set forth.

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

## ARTICLE I

### Definitions

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

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

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

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

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

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

1.7 "Origination Fee" means the fee paid by a Governmental Agency with respect to its participation in the State's Revolving Fund program established pursuant to Title VI of the Water Quality Act of 1987, to provide funds for the acquisition and construction of wastewater Projects.

1.8 "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.

1.9 "Project" means the water development project hereinabove referred to, to be constructed or being constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Governmental Agency 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 "System" means the water development project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

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

## ARTICLE II

### The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by

the Consulting Engineers, the Authority having found, to the extent applicable, that the Project is consistent with the applicable comprehensive plan of water management approved by the Director of the West Virginia Division of Environmental Protection (or in the process of preparation by such Director), has been approved by the West Virginia Bureau for Public Health and is consistent with the standards set by the West Virginia Water Resources Board for the waters of the State affected thereby.

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

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property is approved by the Authority.

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

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

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

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

2.8 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and shall verify or shall have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Governmental Agency, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds is outstanding, business interruption insurance if available at a reasonable cost.

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

2.10 The Governmental Agency shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Governmental Agency shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of this Loan Agreement.

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

2.12 The Governmental Agency, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 10th of each month to the Authority.

### ARTICLE III

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

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

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

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

(c) The Governmental Agency shall either have received bids or entered into contracts for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the Loan will refund an interim construction financing, the Governmental Agency must

either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit A;

(d) No Loan shall be made for the purpose of refinancing any outstanding long-term indebtedness of a Governmental Agency unless an opinion of counsel is received by the Authority to the effect that such refinancing is permitted by the Act and the General Resolution, and that such refinancing will not cause a violation of any covenant, representation or agreement of the Authority contained in the General Resolution or any tax or arbitrage certificate with respect to the exclusion of the interest on the Authority's water development revenue bonds from gross income of the holders thereof for federal income tax purposes;

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

(f) The Governmental Agency 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 shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

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

(h) The Governmental Agency shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), with all requisite appeal periods having expired without successful appeal, and the Authority shall

have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(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 shall have received a certificate of the accountant for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority, to such effect; and

(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 shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of water development projects and satisfactory to the Authority, to such effect, such certificate to be in form and substance satisfactory to the Authority, and evidence satisfactory to the Authority of such irrevocably committed grants.

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

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority and the

Governmental Agency. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority.

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Authority for loans from the Program to finance water development projects and that the obligation of the Authority to make any such loan is subject to the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing and to the right of the Authority to make such loans to other governmental agencies as in the aggregate will permit the fullest and most timely utilization of such proceeds to enable the Authority to pay debt service on the water development revenue bonds issued by it. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until it has available funds sufficient to purchase all the Local Bonds and that, prior to execution of this Loan Agreement, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available. The Governmental Agency further specifically recognizes that during the last 90 days of a period to originate Loans from its water development revenue bond proceeds, the Authority may execute Loan Agreements, commit moneys and close Local Bond sales in such order and manner as it deems in the best interest of the Program. Additionally, the Governmental Agency recognizes that the Authority will purchase the Local Bonds only with funds from the Program and not with funds from any other loan programs of the Authority.

#### ARTICLE IV

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

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

(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, as reflected on the Schedule X attached hereto, and beginning seven (7) months prior to the first date of payment of interest on the Local Bonds and thirteen (13) months prior to the first date of payment of principal of the Local Bonds, respectively, to provide debt service on the Local Bonds by depositing in a sinking fund one-sixth (1/6) of the interest payment next coming due on the Local Bonds and one-twelfth (1/12) of the principal payment next coming due on the Local Bonds and, beginning thirteen (13) 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 (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit or surety or other security instrument) 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) (or such other amount as shall be acceptable to the Authority and as shall fund the Reserve Account over not more than ten (10) years) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

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

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

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

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the gross or net revenues of the System, as more fully set forth 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 Governmental Agency shall complete the Project, shall operate and maintain the System in good condition and, to the extent applicable, in compliance with, among other state and federal standards, the water quality standards established by the West Virginia Division of Environmental Protection (the "DEP") and the United States Environmental Protection Agency (the "EPA"), shall permit the DEP and EPA to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof, and shall, as a condition precedent to the Authority's making the Loan, have obtained, among other permits required, permits from the EPA and the DEP, if required;

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

(v) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, 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; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

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

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

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

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

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

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

(xii) That the Governmental Agency 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 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, 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 Governmental Agency and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing of such Governmental Agency, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Governmental Agency shall not authorize redemption of any Local Bonds by it without the written consent of the Authority and except in compliance with the restrictions contained in this Loan Agreement;

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

(xvii) That the Governmental Agency shall take any and all action, or shall refrain from taking any action, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for federal income tax purposes of interest on the Authority's water development revenue bonds;

(xviii) That the Governmental Agency shall provide the Authority with annual financial information and such other information as is necessary for the Authority to meet its ongoing disclosure requirements;

(xix) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached hereto as Exhibit A, to the effect that the Project has been or will be constructed in accordance with the approved plans,

specifications and design as submitted to the Authority, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

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

(xxi) That the Governmental Agency 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 Governmental Agency shall complete the Monthly Payment Form, attached hereto as Exhibit D 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;

(xxii) 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 Governmental Agency 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;

(xxiii) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Internal Revenue Code of 1986, as amended) from time to time as the Authority may request;

(xxiv) That the Governmental Agency shall obtain the written approval of the Authority before expending any proceeds of the Local Bonds available due to bid/construction/project underruns, including the "contingency" as set forth in the final Schedule A attached to the certificate of the Consulting Engineer;

(xxv) That the Governmental Agency shall list the funding provided by the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project;

(xxvi) That, to the extent required by law, the Governmental Agency shall secure the approval of the Authority and all other state agencies having jurisdiction before applying for federal assistance for pollution abatement in order to

maximize the amounts of such federal financial assistance received or to be received for all water development projects in the State of West Virginia; and

(xxvii) That, as a condition precedent to the Authority's making the Loan, the Governmental Agency shall deliver to the Authority a tax or arbitrage certificate satisfactory to the Authority.

The Governmental Agency 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 recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit B.

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and subject only to such reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority.

4.3 An Origination Fee Account shall be established with the Trustee to hold the portion of the proceeds of any Loan established to fund an Origination Fee. Amounts on deposit in an Origination Fee Account shall belong to the Governmental Agency receiving the related Loan, but such amounts may only be disbursed from the Account to pay the Origination Fee as and when required to satisfy the requirements of the State's Revolving Fund program established pursuant to Title VI of the Water Quality Act of 1987 or for such other purposes as the Authority may approve in writing.

4.4 The principal of the Loan shall be repaid by the Governmental Agency annually on the day and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a semiannual basis as provided in said Schedule X.

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

4.6 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the

Governmental Agency. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series, as reflected by Schedule X hereto.

4.7 The Governmental Agency agrees to pay from time to time, as required by the Authority, the Governmental Agency's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be as determined by the Authority and shall include, without limitation, Program expenses, legal fees paid by the Authority and fees paid to the trustee and paying agents for the water development revenue bonds. The Authority shall provide both the Governmental Agency and the trustee for the water development revenue bonds with a schedule of such fees and charges, and the Governmental Agency shall pay such fees and charges on the dates indicated directly to the trustee. The Governmental Agency hereby specifically authorizes the Authority to exercise the powers granted it by Section 9.06 of the General Resolution.

4.8 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the Authority's bonds.

4.9 As long as the Authority is the owner of any of the Local Bonds outstanding, the Governmental Agency shall not redeem any of such Local Bonds outstanding without the written consent of the Authority, and any such redemption of Local Bonds authorized by the Authority shall provide for the payment of interest to the first allowable redemption date for the applicable water development revenue bonds, the redemption premium payable on the applicable water development revenue bonds redeemable as a consequence of such redemption of Local Bonds and the costs and expenses of the Authority in effecting any such redemption, all as further prescribed by Section 9.11 of the General Resolution. Nothing in this Loan Agreement shall be construed to prohibit the Authority from refunding applicable water development revenue bonds, and such refunding need not be based upon or result in any benefit to the Governmental Agency.

## ARTICLE V

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

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Governmental Agency hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will

fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

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

5.3 In the event the Governmental Agency defaults in any payment due to the Authority pursuant to Section 4.2 hereof, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under Section 7 of the Act, including, without limitation, the right to impose, enforce and collect charges of the System.

## ARTICLE VI

### Other Agreements of the Governmental Agency

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

6.2 At the option of the Authority, the Governmental Agency shall issue and sell to the Authority additional, subordinate bonds to evidence the Governmental Agency's

obligation to repay to the Authority any grant received by the Governmental Agency from the Authority in excess of the amount to which the Governmental Agency is entitled pursuant to applicable policies or rules and regulations of the Authority. Also at the option of the Authority, the Governmental Agency may issue and sell to the Authority additional, subordinate bonds for such purposes as may be acceptable to the Authority.

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

6.4 The Governmental Agency hereby agrees to repay on or prior to the Date of Loan Closing any moneys due and owing by it to the Authority for the planning or design of the Project, and such repayment shall be a condition precedent to the Authority's making the Loan.

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

6.6 Notwithstanding Section 6.5, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.7 The Governmental Agency hereby agrees to give the Authority prior written notice of the issuance by it of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

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

## ARTICLE VII

### Miscellaneous

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

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

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

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

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

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

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

7.8 This Loan Agreement shall terminate upon the earlier of:

(i) the end of ninety (90) days after the date of execution hereof by the Authority if the Governmental Agency has failed to deliver the Local Bonds to the Authority;

(ii) termination by the Authority pursuant to Section 6.3 hereof; or

(iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority.

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

CITY OF MARTINSBURG

[Name of Governmental Agency]

(SEAL)

By: *George Kuor*

Its: Mayor

Attest:

Date: September 27, 2000

*Sharon A. Zbie*

Its: Recorder

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

(SEAL)

By: *Daniel B. Jenkins*

Its: Director

Attest:

Date: September 27, 2000

*Barbara B Meadows*

Secretary-Treasurer

00832/00302

4/6/00

M0310057.1

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

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

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

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

1. My firm is engineer for the acquisition and construction of \_\_\_\_\_ to the \_\_\_\_\_ system (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 meanings set forth in the bond \_\_\_\_\_ adopted or enacted by the Issuer on \_\_\_\_\_, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), 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 [DEP/BPH/PSC] and any change orders approved by the Issuer 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 the

Schedule A 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/BPH/PSC] 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 Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project set forth in the Schedule A attached hereto; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Final Total Cost of Project, Sources of Funds and Costs of Financing" for the Project.

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

[SEAL]

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

\_\_\_\_\_  
\*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".

\*\*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 B

[Opinion of Bond Counsel for Governmental Agency]

[To Be Dated as of Date of Loan Closing]

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

Ladies and Gentlemen:

We are bond counsel to \_\_\_\_\_ (the  
"Governmental Agency"), a \_\_\_\_\_.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated \_\_\_\_\_, \_\_\_\_\_, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of a series of revenue bonds of the Governmental Agency, dated \_\_\_\_\_, \_\_\_\_\_ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of \$\_\_\_\_\_, in the form of one bond, registered as to principal and interest to the Authority, with interest payable semiannually on April 1 and October 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_, at the rate of \_\_\_\_% per annum, and with principal payable annually on October 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_, all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

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

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

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

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

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

3. The Governmental Agency is a duly organized and 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 Governmental Agency and constitute valid and binding obligations of the Governmental Agency enforceable against the Governmental Agency in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Governmental Agency to the Authority and are valid and legally enforceable and binding special obligations of the Governmental Agency, 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,

EXHIBIT C

[Form of Monthly Financial Report]

[Name of Governmental Agency]

[Name of Bond Issue]

Fiscal Year - \_\_\_\_

Report Month: \_\_\_\_

| <u>ITEM</u>                                                                  | <u>CURRENT<br/>MONTH</u> | <u>TOTAL<br/>YEAR TO<br/>TO DATE</u> | <u>BUDGET YEAR<br/>YEAR TO DATE</u> | <u>BUDGET<br/>YEAR MINUS<br/>YEAR TO DATE</u> |
|------------------------------------------------------------------------------|--------------------------|--------------------------------------|-------------------------------------|-----------------------------------------------|
| 1. Gross Revenues<br>Collected                                               |                          |                                      |                                     |                                               |
| 2. Operating<br>Expenses                                                     |                          |                                      |                                     |                                               |
| 3. Other Bond<br>Debt Payments<br>(including<br>Reserve Account<br>Deposits) |                          |                                      |                                     |                                               |
| 4. Bond Payments<br>(include Reserve Account<br>Deposits)                    |                          |                                      |                                     |                                               |
| 5. Renewal and<br>Replacement Fund<br>Deposit                                |                          |                                      |                                     |                                               |

Witnesseth my signature this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[Name of Governmental Agency]

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

Authorized Officer

### Instructions for Completing Monthly Financial Report

1. You will need a copy of the current fiscal year budget adopted by the Governmental Agency 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 ( $1200/12$ ). This is the incremental amount for the Budget Year to Date column.
2. In Item 2, provide the amount of actual operating expenses for the current month and the total amount year to date in the respective columns. The SRF 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.
3. In Item 3, provide the principal, interest and reserve account payments for all the outstanding bonds of the Governmental Agency other than this Loan.
4. In Item 4, provide the principal, interest and reserve account payments for this Loan. You need to call the Municipal Bond Commission for the exact amount of these payments and when they begin.
5. In Item 5, 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 Items 3 and 4. If gross revenues are \$12,000, the Renewal and Replacement Fund should have an amount of \$300 (2.5% of \$12,000), LESS the amount of all reserve account payments in Items 3 & 4. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Governmental Agency.
6. The Governmental Agency must complete the Monthly Financial Report and forward it to the Authority by the 10<sup>th</sup> day of each month, commencing on the date contracts are executed for the construction of the Project and for 2 years following the completion of the Project. The Authority will notify the Governmental Agency when the Monthly Financial Report no longer needs to be filed.

EXHIBIT D

[Monthly Payment Form]

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

Re: [Name of bond issue]

Ladies and Gentlemen:

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

Sinking Fund:

Interest \$\_\_\_\_\_

Principal \$\_\_\_\_\_

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

Reserve Account: \$\_\_\_\_\_

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

[Name of Governmental Agency]

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

Enclosure: copy of check(s)

## SCHEDULE X

### DESCRIPTION OF LOCAL BONDS

|                                 |                    |
|---------------------------------|--------------------|
| Principal Amount of Local Bonds | <u>\$1,976,352</u> |
| Purchase Price of Local Bonds   | <u>\$1,976,352</u> |

Interest on the Local Bonds is payable on April 1 and October 1 in each year, beginning with the first semiannual interest payment date after delivery of the Local Bonds to the Authority, until the Local Bonds are paid in full, at the rate of 5.8 % per annum. Principal of the Local Bonds is payable on October 1 in each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

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

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

Combined Waterworks and Sewerage System Refunding Revenue Bonds, Series 1995, dated September 1, 1995, originally issued in the aggregate principal amount of \$3,645,000.

**SCHEDULE Y**

**City of Martinsburg (West Virginia)**  
*WDA Loan (Loan Program II, 1999 Series A) of \$1,976,352*  
*5.8% Interest Rate*  
*Closing Date: September 27, 2000*

**DEBT SERVICE SCHEDULE**

| Date       | Principal | Coupon | Interest  | Total P+I |
|------------|-----------|--------|-----------|-----------|
| 10/01/2000 | -         | -      | -         | -         |
| 4/01/2001  | -         | -      | 58,587.86 | 58,587.86 |
| 10/01/2001 | 14,303.00 | 5.800% | 57,314.21 | 71,617.21 |
| 4/01/2002  | -         | -      | 56,899.42 | 56,899.42 |
| 10/01/2002 | 15,132.00 | 5.800% | 56,899.42 | 72,031.42 |
| 4/01/2003  | -         | -      | 56,460.59 | 56,460.59 |
| 10/01/2003 | 16,010.00 | 5.800% | 56,460.59 | 72,470.59 |
| 4/01/2004  | -         | -      | 55,996.30 | 55,996.30 |
| 10/01/2004 | 16,938.00 | 5.800% | 55,996.30 | 72,934.30 |
| 4/01/2005  | -         | -      | 55,505.10 | 55,505.10 |
| 10/01/2005 | 17,921.00 | 5.800% | 55,505.10 | 73,426.10 |
| 4/01/2006  | -         | -      | 54,985.39 | 54,985.39 |
| 10/01/2006 | 18,960.00 | 5.800% | 54,985.39 | 73,945.39 |
| 4/01/2007  | -         | -      | 54,435.55 | 54,435.55 |
| 10/01/2007 | 20,060.00 | 5.800% | 54,435.55 | 74,495.55 |
| 4/01/2008  | -         | -      | 53,853.81 | 53,853.81 |
| 10/01/2008 | 21,224.00 | 5.800% | 53,853.81 | 75,077.81 |
| 4/01/2009  | -         | -      | 53,238.32 | 53,238.32 |
| 10/01/2009 | 22,454.00 | 5.800% | 53,238.32 | 75,692.32 |
| 4/01/2010  | -         | -      | 52,587.15 | 52,587.15 |
| 10/01/2010 | 23,757.00 | 5.800% | 52,587.15 | 76,344.15 |
| 4/01/2011  | -         | -      | 51,898.20 | 51,898.20 |
| 10/01/2011 | 25,135.00 | 5.800% | 51,898.20 | 77,033.20 |
| 4/01/2012  | -         | -      | 51,169.28 | 51,169.28 |
| 10/01/2012 | 26,593.00 | 5.800% | 51,169.28 | 77,762.28 |
| 4/01/2013  | -         | -      | 50,398.09 | 50,398.09 |
| 10/01/2013 | 28,135.00 | 5.800% | 50,398.09 | 78,533.09 |
| 4/01/2014  | -         | -      | 49,582.17 | 49,582.17 |
| 10/01/2014 | 29,767.00 | 5.800% | 49,582.17 | 79,349.17 |
| 4/01/2015  | -         | -      | 48,718.93 | 48,718.93 |
| 10/01/2015 | 31,493.00 | 5.800% | 48,718.93 | 80,211.93 |
| 4/01/2016  | -         | -      | 47,805.63 | 47,805.63 |
| 10/01/2016 | 33,320.00 | 5.800% | 47,805.63 | 81,125.63 |
| 4/01/2017  | -         | -      | 46,839.35 | 46,839.35 |
| 10/01/2017 | 35,252.00 | 5.800% | 46,839.35 | 82,091.35 |
| 4/01/2018  | -         | -      | 45,817.04 | 45,817.04 |
| 10/01/2018 | 37,297.00 | 5.800% | 45,817.04 | 83,114.04 |
| 4/01/2019  | -         | -      | 44,735.43 | 44,735.43 |
| 10/01/2019 | 39,460.00 | 5.800% | 44,735.43 | 84,195.43 |
| 4/01/2020  | -         | -      | 43,591.09 | 43,591.09 |
| 10/01/2020 | 41,749.00 | 5.800% | 43,591.09 | 85,340.09 |
| 4/01/2021  | -         | -      | 42,380.37 | 42,380.37 |
| 10/01/2021 | 44,170.00 | 5.800% | 42,380.37 | 86,550.37 |
| 4/01/2022  | -         | -      | 41,099.44 | 41,099.44 |
| 10/01/2022 | 46,732.00 | 5.800% | 41,099.44 | 87,831.44 |
| 4/01/2023  | -         | -      | 39,744.21 | 39,744.21 |

Ferris, Baker Wotts, Incorporated  
 Public Finance

File = wdalns99.sf-Martinsburg- SINGLE PURPOSE  
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**City of Martinsburg (West Virginia)**  
*WDA Loan (Loan Program II, 1999 Series A) of \$1,976,352*  
*5.8% Interest Rate*  
*Closing Date: September 27, 2000*

**DEBT SERVICE SCHEDULE**

| Date         | Principal           | Coupon   | Interest            | Total P+i           |
|--------------|---------------------|----------|---------------------|---------------------|
| 10/01/2023   | 49,443.00           | 5.800%   | 39,744.21           | 89,187.21           |
| 4/01/2024    | -                   | -        | 38,310.36           | 38,310.36           |
| 10/01/2024   | 52,310.00           | 5.800%   | 38,310.36           | 90,620.36           |
| 4/01/2025    | -                   | -        | 36,793.37           | 36,793.37           |
| 10/01/2025   | 55,344.00           | 5.800%   | 36,793.37           | 92,137.37           |
| 4/01/2026    | -                   | -        | 35,188.40           | 35,188.40           |
| 10/01/2026   | 58,554.00           | 5.800%   | 35,188.40           | 93,742.40           |
| 4/01/2027    | -                   | -        | 33,490.33           | 33,490.33           |
| 10/01/2027   | 61,950.00           | 5.800%   | 33,490.33           | 95,440.33           |
| 4/01/2028    | -                   | -        | 31,693.78           | 31,693.78           |
| 10/01/2028   | 65,544.00           | 5.800%   | 31,693.78           | 97,237.78           |
| 4/01/2029    | -                   | -        | 29,793.01           | 29,793.01           |
| 10/01/2029   | 69,345.00           | 5.800%   | 29,793.01           | 99,138.01           |
| 4/01/2030    | -                   | -        | 27,782.00           | 27,782.00           |
| 10/01/2030   | 73,367.00           | 5.800%   | 27,782.00           | 101,149.00          |
| 4/01/2031    | -                   | -        | 25,654.36           | 25,654.36           |
| 10/01/2031   | 77,622.00           | 5.800%   | 25,654.36           | 103,276.36          |
| 4/01/2032    | -                   | -        | 23,403.32           | 23,403.32           |
| 10/01/2032   | 82,124.00           | 5.800%   | 23,403.32           | 105,527.32          |
| 4/01/2033    | -                   | -        | 21,021.72           | 21,021.72           |
| 10/01/2033   | 86,888.00           | 5.800%   | 21,021.72           | 107,909.72          |
| 4/01/2034    | -                   | -        | 18,501.97           | 18,501.97           |
| 10/01/2034   | 91,927.00           | 5.800%   | 18,501.97           | 110,428.97          |
| 4/01/2035    | -                   | -        | 15,836.09           | 15,836.09           |
| 10/01/2035   | 97,259.00           | 5.800%   | 15,836.09           | 113,095.09          |
| 4/01/2036    | -                   | -        | 13,015.58           | 13,015.58           |
| 10/01/2036   | 102,900.00          | 5.800%   | 13,015.58           | 115,915.58          |
| 4/01/2037    | -                   | -        | 10,031.48           | 10,031.48           |
| 10/01/2037   | 108,868.00          | 5.800%   | 10,031.48           | 118,899.48          |
| 4/01/2038    | -                   | -        | 6,874.31            | 6,874.31            |
| 10/01/2038   | 115,182.00          | 5.800%   | 6,874.31            | 122,056.31          |
| 4/01/2039    | -                   | -        | 3,534.03            | 3,534.03            |
| 10/01/2039   | 121,863.00          | 5.800%   | 3,534.03            | 125,397.03          |
| <b>Total</b> | <b>1,976,352.00</b> | <b>-</b> | <b>3,053,232.01</b> | <b>5,029,584.01</b> |

Ferris, Baker Watts, Incorporated  
Public Finance

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## SCHEDULE Z

None.

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF MARTINSBURG  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2000A  
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-1

\$ 7,564,000

KNOW ALL MEN BY THESE PRESENTS: That CITY OF MARTINSBURG, a municipal corporation and political subdivision of the State of West Virginia in Berkeley County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of SEVEN MILLION FIVE HUNDRED SIXTY-FOUR THOUSAND DOLLARS (\$7,564,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as Exhibit A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing on June 1, 2002, as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit B.

The interest and DWTRF Administrative Fee (as defined in the hereinafter described Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2002, as set forth on Exhibit B attached hereto. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest and DWTRF Administrative Fee on this Bond are payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Bond Legislation) on the 15th day of the month next preceding an interest and DWTRF Administrative Fee payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may only 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 Bureau for Public Health ("BPH") and upon the terms and conditions prescribed by, and otherwise in compliance with, the Drinking Water Treatment Revolving Fund Loan Agreement between the Issuer and the Authority, acting on behalf of the BPH, dated September 27, 2000.

This Bond is issued (i) to permanently finance a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public combined waterworks and sewerage facilities of the Issuer (the "Project"); (ii) to fund a debt reserve service account for the Bonds and the Series 2000B Bonds described below; and (iii) to pay certain costs of issuance hereof and related costs. The existing public combined waterworks and sewerage facilities of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), an Ordinance duly enacted by the Issuer on September 14, 2000, and effective September 25, 2000, and a Supplemental Resolution duly adopted by the Issuer on September 25, 2000 (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other securities provided for the Bonds of this Series (the "Bonds") under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH (1) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1995, OF THE ISSUER, DATED SEPTEMBER 1, 1995, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$3,645,000 (THE "SERIES 1995 BONDS"); (2) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2000B (WEST VIRGINIA INFRASTRUCTURE FUND), OF THE ISSUER, DATED SEPTEMBER 27, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,000,000 (THE "SERIES 2000B BONDS"); AND (3) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2000C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), OF THE ISSUER, DATED SEPTEMBER 27, 2000, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$1,976,352 (THE "SERIES 2000C BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the System, on a parity with the pledge of the Gross Revenues in favor of the holders of the Series 1995 Bonds, the Series 2000B Bonds and the Series 2000C Bonds, and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2000A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross 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 an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 2000A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% (120% so long as the Series 1995 Bonds remain Outstanding) of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 1995 Bonds, Series 2000B Bonds and the Series 2000C Bonds, provided however, that when the Series 1995 Bonds are no longer Outstanding and so long as there exists in the Series 2000A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Series 2000B Bonds and the Series 2000C Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

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

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

IN WITNESS WHEREOF, CITY OF MARTINSBURG has caused this Bond to be signed by its Mayor and its City Manager and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated September 27, 2000.

CITY OF MARTINSBURG

[SEAL]

George Karol  
Mayor

Matthew Martin  
City Manager

ATTEST:

Sharon A. Zivic  
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2000A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: September 27, 2000.

ONE VALLEY BANK, NATIONAL ASSOCIATION,  
as Registrar

By

*Charlotte Morgan*  
Its Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| <u>Amount</u>     | <u>Date</u>        | <u>Amount</u> | <u>Date</u> |
|-------------------|--------------------|---------------|-------------|
| (1) \$ 664,237.00 | September 27, 2000 | ( 7) \$       |             |
| (2) \$            |                    | ( 8) \$       |             |
| (3) \$            |                    | ( 9) \$       |             |
| (4) \$            |                    | (10) \$       |             |
| (5) \$            |                    | (11) \$       |             |
| (6) \$            |                    | (12) \$       |             |

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

SPECIMEN

**EXHIBIT B**

**DEBT SERVICE SCHEDULE**

SPECIMEN

**City of Martinsburg (West Virginia)**  
*DWTRF Loan of \$7,564,000*  
*20 Years, 2% Interest Rate, 1% Administrative Fee*  
*Closing Date: September 27, 2000*

**DEBT SERVICE SCHEDULE**

| Date       | Principal | Coupon | Interest  | Total P+I  |
|------------|-----------|--------|-----------|------------|
| 12/01/2000 | -         | -      | -         | -          |
| 3/01/2001  | -         | -      | -         | -          |
| 6/01/2001  | -         | -      | -         | -          |
| 9/01/2001  | -         | -      | -         | -          |
| 12/01/2001 | -         | -      | -         | -          |
| 3/01/2002  | -         | -      | -         | -          |
| 6/01/2002  | 77,130.00 | 2.000% | 37,820.00 | 114,950.00 |
| 9/01/2002  | 77,516.00 | 2.000% | 37,434.35 | 114,950.35 |
| 12/01/2002 | 77,904.00 | 2.000% | 37,046.77 | 114,950.77 |
| 3/01/2003  | 78,293.00 | 2.000% | 36,657.25 | 114,950.25 |
| 6/01/2003  | 78,685.00 | 2.000% | 36,265.79 | 114,950.79 |
| 9/01/2003  | 79,078.00 | 2.000% | 35,872.36 | 114,950.36 |
| 12/01/2003 | 79,473.00 | 2.000% | 35,476.97 | 114,949.97 |
| 3/01/2004  | 79,871.00 | 2.000% | 35,079.61 | 114,950.61 |
| 6/01/2004  | 80,270.00 | 2.000% | 34,680.25 | 114,950.25 |
| 9/01/2004  | 80,671.00 | 2.000% | 34,278.90 | 114,949.90 |
| 12/01/2004 | 81,075.00 | 2.000% | 33,875.55 | 114,950.55 |
| 3/01/2005  | 81,480.00 | 2.000% | 33,470.17 | 114,950.17 |
| 6/01/2005  | 81,888.00 | 2.000% | 33,062.77 | 114,950.77 |
| 9/01/2005  | 82,297.00 | 2.000% | 32,653.33 | 114,950.33 |
| 12/01/2005 | 82,709.00 | 2.000% | 32,241.85 | 114,950.85 |
| 3/01/2006  | 83,122.00 | 2.000% | 31,828.30 | 114,950.30 |
| 6/01/2006  | 83,538.00 | 2.000% | 31,412.69 | 114,950.69 |
| 9/01/2006  | 83,955.00 | 2.000% | 30,995.00 | 114,950.00 |
| 12/01/2006 | 84,375.00 | 2.000% | 30,575.23 | 114,950.23 |
| 3/01/2007  | 84,797.00 | 2.000% | 30,153.35 | 114,950.35 |
| 6/01/2007  | 85,221.00 | 2.000% | 29,729.37 | 114,950.37 |
| 9/01/2007  | 85,647.00 | 2.000% | 29,303.26 | 114,950.26 |
| 12/01/2007 | 86,075.00 | 2.000% | 28,875.03 | 114,950.03 |
| 3/01/2008  | 86,506.00 | 2.000% | 28,444.65 | 114,950.65 |
| 6/01/2008  | 86,938.00 | 2.000% | 28,012.12 | 114,950.12 |
| 9/01/2008  | 87,373.00 | 2.000% | 27,577.43 | 114,950.43 |
| 12/01/2008 | 87,810.00 | 2.000% | 27,140.57 | 114,950.57 |
| 3/01/2009  | 88,249.00 | 2.000% | 26,701.52 | 114,950.52 |
| 6/01/2009  | 88,690.00 | 2.000% | 26,260.27 | 114,950.27 |
| 9/01/2009  | 89,134.00 | 2.000% | 25,816.82 | 114,950.82 |
| 12/01/2009 | 89,579.00 | 2.000% | 25,371.15 | 114,950.15 |
| 3/01/2010  | 90,027.00 | 2.000% | 24,923.26 | 114,950.26 |
| 6/01/2010  | 90,477.00 | 2.000% | 24,473.12 | 114,950.12 |
| 9/01/2010  | 90,930.00 | 2.000% | 24,020.74 | 114,950.74 |
| 12/01/2010 | 91,384.00 | 2.000% | 23,566.09 | 114,950.09 |
| 3/01/2011  | 91,841.00 | 2.000% | 23,109.17 | 114,950.17 |
| 6/01/2011  | 92,300.00 | 2.000% | 22,649.96 | 114,949.96 |
| 9/01/2011  | 92,762.00 | 2.000% | 22,188.46 | 114,950.46 |
| 12/01/2011 | 93,226.00 | 2.000% | 21,724.65 | 114,950.65 |
| 3/01/2012  | 93,692.00 | 2.000% | 21,258.52 | 114,950.52 |

**City of Martinsburg (West Virginia)**  
*DWTRF Loan of \$7,564,000*  
*20 Years, 2% Interest Rate, 1% Administrative Fee*  
*Closing Date: September 27, 2000*

**DEBT SERVICE SCHEDULE**

| Date         | Principal           | Coupon   | Interest            | Total P+I             |
|--------------|---------------------|----------|---------------------|-----------------------|
| 6/01/2012    | 94,160.00           | 2.000%   | 20,790.06           | 114,950.06            |
| 9/01/2012    | 94,631.00           | 2.000%   | 20,319.26           | 114,950.26            |
| 12/01/2012   | 95,104.00           | 2.000%   | 19,846.11           | 114,950.11            |
| 3/01/2013    | 95,580.00           | 2.000%   | 19,370.59           | 114,950.59            |
| 6/01/2013    | 96,058.00           | 2.000%   | 18,892.69           | 114,950.69            |
| 9/01/2013    | 96,538.00           | 2.000%   | 18,412.40           | 114,950.40            |
| 12/01/2013   | 97,021.00           | 2.000%   | 17,929.71           | 114,950.71            |
| 3/01/2014    | 97,506.00           | 2.000%   | 17,444.60           | 114,950.60            |
| 6/01/2014    | 97,993.00           | 2.000%   | 16,957.07           | 114,950.07            |
| 9/01/2014    | 98,483.00           | 2.000%   | 16,467.11           | 114,950.11            |
| 12/01/2014   | 98,976.00           | 2.000%   | 15,974.69           | 114,950.69            |
| 3/01/2015    | 99,471.00           | 2.000%   | 15,479.81           | 114,950.81            |
| 6/01/2015    | 99,968.00           | 2.000%   | 14,982.46           | 114,950.46            |
| 9/01/2015    | 100,468.00          | 2.000%   | 14,482.62           | 114,950.62            |
| 12/01/2015   | 100,970.00          | 2.000%   | 13,980.28           | 114,950.28            |
| 3/01/2016    | 101,475.00          | 2.000%   | 13,475.43           | 114,950.43            |
| 6/01/2016    | 101,982.00          | 2.000%   | 12,968.05           | 114,950.05            |
| 9/01/2016    | 102,492.00          | 2.000%   | 12,458.14           | 114,950.14            |
| 12/01/2016   | 103,005.00          | 2.000%   | 11,945.68           | 114,950.68            |
| 3/01/2017    | 103,520.00          | 2.000%   | 11,430.66           | 114,950.66            |
| 6/01/2017    | 104,037.00          | 2.000%   | 10,913.06           | 114,950.06            |
| 9/01/2017    | 104,558.00          | 2.000%   | 10,392.87           | 114,950.87            |
| 12/01/2017   | 105,080.00          | 2.000%   | 9,870.08            | 114,950.08            |
| 3/01/2018    | 105,606.00          | 2.000%   | 9,344.68            | 114,950.68            |
| 6/01/2018    | 106,134.00          | 2.000%   | 8,816.65            | 114,950.65            |
| 9/01/2018    | 106,664.00          | 2.000%   | 8,285.98            | 114,949.98            |
| 12/01/2018   | 107,198.00          | 2.000%   | 7,752.66            | 114,950.66            |
| 3/01/2019    | 107,734.00          | 2.000%   | 7,216.67            | 114,950.67            |
| 6/01/2019    | 108,272.00          | 2.000%   | 6,678.00            | 114,950.00            |
| 9/01/2019    | 108,814.00          | 2.000%   | 6,136.64            | 114,950.64            |
| 12/01/2019   | 109,358.00          | 2.000%   | 5,592.57            | 114,950.57            |
| 3/01/2020    | 109,905.00          | 2.000%   | 5,045.78            | 114,950.78            |
| 6/01/2020    | 110,454.00          | 2.000%   | 4,496.26            | 114,950.26            |
| 9/01/2020    | 111,006.00          | 2.000%   | 3,943.99            | 114,949.99            |
| 12/01/2020   | 111,561.00          | 2.000%   | 3,388.96            | 114,949.96            |
| 3/01/2021    | 112,119.00          | 2.000%   | 2,831.15            | 114,950.15            |
| 6/01/2021    | 112,680.00          | 2.000%   | 2,270.56            | 114,950.56            |
| 9/01/2021    | 113,243.00          | 2.000%   | 1,707.16            | 114,950.16            |
| 12/01/2021   | 113,809.00          | 2.000%   | 1,140.94            | 114,949.94            |
| 3/01/2022    | 114,379.00          | 2.000%   | 571.90              | 114,950.90            |
| <b>Total</b> | <b>7,564,000.00</b> | <b>-</b> | <b>1,632,030.63</b> | <b>9,196,030.63 *</b> |

\*Plus \$10,200 one-percent administrative fee paid quarterly. Total fee paid over the life of the loan is \$816,000.

**City of Martinsburg (West Virginia)**

*DWTRF Loan of \$7,564,000*

*20 Years, 2% Interest Rate, 1% Administrative Fee*

*Closing Date: September 27, 2000*

**DEBT SERVICE SCHEDULE**

**YIELD STATISTICS**

|                                                     |              |
|-----------------------------------------------------|--------------|
| Accrued Interest from 09/27/2000 to 09/27/2000..... | (215,994.22) |
| Bond Year Dollars.....                              | \$92,401.23  |
| Average Life.....                                   | 12.216 Years |
| Average Coupon.....                                 | 1.7662433%   |
| Net Interest Cost (NIC).....                        | 1.7662433%   |
| True Interest Cost (TIC).....                       | 2.0095156%   |
| Bond Yield for Arbitrage Purposes.....              | 2.0095156%   |
| All Inclusive Cost (AIC).....                       | 2.8768036%   |

**IRS FORM 8038**

|                                |              |
|--------------------------------|--------------|
| Net Interest Cost.....         | 2.0000002%   |
| Weighted Average Maturity..... | 12.216 Years |

*Ferris, Baker Watts, Incorporated*  
*Public Finance*

*File = DWTRF City of Martinsburg.sf-9 18 00- SINGLE PURPOSE*

*9/18/2000 3:52 PM*

SPECIMEN

## ASSIGNMENT

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

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

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

SPECIMEN

In the presence of:

SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF MARTINSBURG  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2000B  
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-1

\$ 3,000,000

KNOW ALL MEN BY THESE PRESENTS: That CITY OF MARTINSBURG, a municipal corporation and political subdivision of the State of West Virginia in Berkeley County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of THREE MILLION DOLLARS (\$3,000,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as Exhibit A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing on June 1, 2002, as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit B, payable March 1, June 1, September 1 and December 1 of each year, commencing on June 1, 2002.

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

This Bond may only 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 Infrastructure and Jobs Development Council (the "Council") and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement between the Issuer and the Authority, acting on behalf of the Council, dated September 27, 2000.

This Bond is issued (i) to permanently finance a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public combined waterworks and sewerage facilities of the Issuer (the "Project");

and (ii) to pay certain costs of issuance hereof and related costs. The existing public combined waterworks and sewerage facilities of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), an Ordinance duly enacted by the Issuer on September 14, 2000, and effective September 25, 2000 and a Supplemental Resolution duly adopted by the Issuer on September 25, 2000 (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other securities provided for the Bonds of this Series (the "Bonds") under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH (1) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1995, OF THE ISSUER, DATED SEPTEMBER 1, 1995, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$3,645,000 (THE "SERIES 1995 BONDS"); (2) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2000A (WEST VIRGINIA DWTRF PROGRAM), OF THE ISSUER, DATED SEPTEMBER 27, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,564,000 (THE "SERIES 2000A BONDS"); AND (3) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2000C (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), OF THE ISSUER, DATED SEPTEMBER 27, 2000, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$1,976,352 (THE "SERIES 2000C BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the System, on a parity with the pledge of the Gross Revenues in favor of the holders of the Series 1995 Bonds, the Series 2000A Bonds and the Series 2000C Bonds, and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2000B Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross 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 an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 2000B Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and

maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% (120% so long as the Series 1995 Bonds remain Outstanding) of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 1995 Bonds, Series 2000A Bonds and the Series 2000C Bonds, provided however, that when the Series 1995 Bonds are no longer Outstanding and so long as there exists in the Series 2000B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Series 2000A Bonds and the Series 2000C Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes

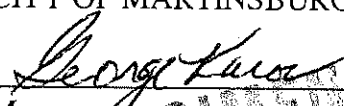
of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

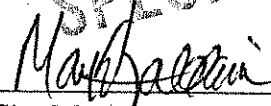
All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, CITY OF MARTINSBURG has caused this Bond to be signed by its Mayor and its City Manager and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated September 27, 2000.

CITY OF MARTINSBURG

[SEAL]

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Manager

ATTEST:

  
\_\_\_\_\_  
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2000B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: September 27, 2000.

ONE VALLEY BANK, NATIONAL ASSOCIATION,  
as Registrar

By

*Charlotte L. Morgan*  
Its Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| <u>Amount</u>     | <u>Date</u>        | <u>Amount</u> | <u>Date</u> |
|-------------------|--------------------|---------------|-------------|
| (1) \$ 680,942.00 | September 27, 2000 | ( 7) \$       |             |
| (2) \$            |                    | ( 8) \$       |             |
| (3) \$            |                    | ( 9) \$       |             |
| (4) \$            |                    | (10) \$       |             |
| (5) \$            |                    | (11) \$       |             |
| (6) \$            |                    | (12) \$       |             |

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

SPECIMEN

EXHIBIT B

DEBT SERVICE SCHEDULE

SPECIMEN

# City of Martinsburg (West Virginia)

Loan of \$3,000,000

20 Years, 3% Interest Rate

Closing Date: September 27, 2000

## DEBT SERVICE SCHEDULE

| Date       | Principal | Coupon | Interest  | Total P+i |
|------------|-----------|--------|-----------|-----------|
| 12/01/2000 | -         | -      | -         | -         |
| 3/01/2001  | -         | -      | -         | -         |
| 6/01/2001  | -         | -      | -         | -         |
| 9/01/2001  | -         | -      | -         | -         |
| 12/01/2001 | -         | -      | -         | -         |
| 3/01/2002  | -         | -      | -         | -         |
| 6/01/2002  | 27,505.00 | 3.000% | 22,500.00 | 50,005.00 |
| 9/01/2002  | 27,711.00 | 3.000% | 22,293.71 | 50,004.71 |
| 12/01/2002 | 27,919.00 | 3.000% | 22,085.88 | 50,004.88 |
| 3/01/2003  | 28,128.00 | 3.000% | 21,876.49 | 50,004.49 |
| 6/01/2003  | 28,339.00 | 3.000% | 21,665.53 | 50,004.53 |
| 9/01/2003  | 28,552.00 | 3.000% | 21,452.99 | 50,004.99 |
| 12/01/2003 | 28,766.00 | 3.000% | 21,238.85 | 50,004.85 |
| 3/01/2004  | 28,982.00 | 3.000% | 21,023.10 | 50,005.10 |
| 6/01/2004  | 29,199.00 | 3.000% | 20,805.74 | 50,004.74 |
| 9/01/2004  | 29,418.00 | 3.000% | 20,586.74 | 50,004.74 |
| 12/01/2004 | 29,638.00 | 3.000% | 20,366.11 | 50,004.11 |
| 3/01/2005  | 29,861.00 | 3.000% | 20,143.82 | 50,004.82 |
| 6/01/2005  | 30,085.00 | 3.000% | 19,919.87 | 50,004.87 |
| 9/01/2005  | 30,310.00 | 3.000% | 19,694.23 | 50,004.23 |
| 12/01/2005 | 30,538.00 | 3.000% | 19,466.90 | 50,004.90 |
| 3/01/2006  | 30,767.00 | 3.000% | 19,237.87 | 50,004.87 |
| 6/01/2006  | 30,997.00 | 3.000% | 19,007.12 | 50,004.12 |
| 9/01/2006  | 31,230.00 | 3.000% | 18,774.64 | 50,004.64 |
| 12/01/2006 | 31,464.00 | 3.000% | 18,540.41 | 50,004.41 |
| 3/01/2007  | 31,700.00 | 3.000% | 18,304.43 | 50,004.43 |
| 6/01/2007  | 31,938.00 | 3.000% | 18,066.68 | 50,004.68 |
| 9/01/2007  | 32,177.00 | 3.000% | 17,827.15 | 50,004.15 |
| 12/01/2007 | 32,419.00 | 3.000% | 17,585.82 | 50,004.82 |
| 3/01/2008  | 32,662.00 | 3.000% | 17,342.68 | 50,004.68 |
| 6/01/2008  | 32,907.00 | 3.000% | 17,097.71 | 50,004.71 |
| 9/01/2008  | 33,154.00 | 3.000% | 16,850.91 | 50,004.91 |
| 12/01/2008 | 33,402.00 | 3.000% | 16,602.26 | 50,004.26 |
| 3/01/2009  | 33,653.00 | 3.000% | 16,351.74 | 50,004.74 |
| 6/01/2009  | 33,905.00 | 3.000% | 16,099.34 | 50,004.34 |
| 9/01/2009  | 34,160.00 | 3.000% | 15,845.06 | 50,005.06 |
| 12/01/2009 | 34,416.00 | 3.000% | 15,588.86 | 50,004.86 |
| 3/01/2010  | 34,674.00 | 3.000% | 15,330.74 | 50,004.74 |
| 6/01/2010  | 34,934.00 | 3.000% | 15,070.68 | 50,004.68 |
| 9/01/2010  | 35,196.00 | 3.000% | 14,808.68 | 50,004.68 |
| 12/01/2010 | 35,460.00 | 3.000% | 14,544.71 | 50,004.71 |
| 3/01/2011  | 35,726.00 | 3.000% | 14,278.76 | 50,004.76 |
| 6/01/2011  | 35,994.00 | 3.000% | 14,010.81 | 50,004.81 |
| 9/01/2011  | 36,264.00 | 3.000% | 13,740.86 | 50,004.86 |
| 12/01/2011 | 36,536.00 | 3.000% | 13,468.88 | 50,004.88 |
| 3/01/2012  | 36,810.00 | 3.000% | 13,194.86 | 50,004.86 |

# City of Martinsburg (West Virginia)

Loan of \$3,000,000

20 Years, 3% Interest Rate

Closing Date: September 27, 2000

## DEBT SERVICE SCHEDULE

| Date         | Principal           | Coupon   | Interest            | Total P+I           |
|--------------|---------------------|----------|---------------------|---------------------|
| 6/01/2012    | 37,086.00           | 3.000%   | 12,918.78           | 50,004.78           |
| 9/01/2012    | 37,364.00           | 3.000%   | 12,640.64           | 50,004.64           |
| 12/01/2012   | 37,644.00           | 3.000%   | 12,360.41           | 50,004.41           |
| 3/01/2013    | 37,927.00           | 3.000%   | 12,078.08           | 50,005.08           |
| 6/01/2013    | 38,211.00           | 3.000%   | 11,793.62           | 50,004.62           |
| 9/01/2013    | 38,498.00           | 3.000%   | 11,507.04           | 50,005.04           |
| 12/01/2013   | 38,786.00           | 3.000%   | 11,218.31           | 50,004.31           |
| 3/01/2014    | 39,077.00           | 3.000%   | 10,927.41           | 50,004.41           |
| 6/01/2014    | 39,370.00           | 3.000%   | 10,634.33           | 50,004.33           |
| 9/01/2014    | 39,666.00           | 3.000%   | 10,339.06           | 50,005.06           |
| 12/01/2014   | 39,963.00           | 3.000%   | 10,041.56           | 50,004.56           |
| 3/01/2015    | 40,263.00           | 3.000%   | 9,741.84            | 50,004.84           |
| 6/01/2015    | 40,565.00           | 3.000%   | 9,439.87            | 50,004.87           |
| 9/01/2015    | 40,869.00           | 3.000%   | 9,135.63            | 50,004.63           |
| 12/01/2015   | 41,175.00           | 3.000%   | 8,829.11            | 50,004.11           |
| 3/01/2016    | 41,484.00           | 3.000%   | 8,520.30            | 50,004.30           |
| 6/01/2016    | 41,795.00           | 3.000%   | 8,209.17            | 50,004.17           |
| 9/01/2016    | 42,109.00           | 3.000%   | 7,895.71            | 50,004.71           |
| 12/01/2016   | 42,425.00           | 3.000%   | 7,579.89            | 50,004.89           |
| 3/01/2017    | 42,743.00           | 3.000%   | 7,261.70            | 50,004.70           |
| 6/01/2017    | 43,063.00           | 3.000%   | 6,941.13            | 50,004.13           |
| 9/01/2017    | 43,386.00           | 3.000%   | 6,618.16            | 50,004.16           |
| 12/01/2017   | 43,712.00           | 3.000%   | 6,292.76            | 50,004.76           |
| 3/01/2018    | 44,040.00           | 3.000%   | 5,964.92            | 50,004.92           |
| 6/01/2018    | 44,370.00           | 3.000%   | 5,634.62            | 50,004.62           |
| 9/01/2018    | 44,703.00           | 3.000%   | 5,301.85            | 50,004.85           |
| 12/01/2018   | 45,038.00           | 3.000%   | 4,966.58            | 50,004.58           |
| 3/01/2019    | 45,376.00           | 3.000%   | 4,628.79            | 50,004.79           |
| 6/01/2019    | 45,716.00           | 3.000%   | 4,288.47            | 50,004.47           |
| 9/01/2019    | 46,059.00           | 3.000%   | 3,945.60            | 50,004.60           |
| 12/01/2019   | 46,404.00           | 3.000%   | 3,600.16            | 50,004.16           |
| 3/01/2020    | 46,752.00           | 3.000%   | 3,252.13            | 50,004.13           |
| 6/01/2020    | 47,103.00           | 3.000%   | 2,901.49            | 50,004.49           |
| 9/01/2020    | 47,456.00           | 3.000%   | 2,548.22            | 50,004.22           |
| 12/01/2020   | 47,812.00           | 3.000%   | 2,192.30            | 50,004.30           |
| 3/01/2021    | 48,171.00           | 3.000%   | 1,833.71            | 50,004.71           |
| 6/01/2021    | 48,532.00           | 3.000%   | 1,472.42            | 50,004.42           |
| 9/01/2021    | 48,896.00           | 3.000%   | 1,108.43            | 50,004.43           |
| 12/01/2021   | 49,263.00           | 3.000%   | 741.71              | 50,004.71           |
| 3/01/2022    | 49,632.00           | 3.000%   | 372.24              | 50,004.24           |
| <b>Total</b> | <b>3,000,000.00</b> | <b>-</b> | <b>1,000,369.77</b> | <b>4,000,369.77</b> |

**City of Martinsburg (West Virginia)**

*Loan of \$3,000,000*

*20 Years, 3% Interest Rate*

*Closing Date: September 27, 2000*

**DEBT SERVICE SCHEDULE**

**YIELD STATISTICS**

|                                                     |              |
|-----------------------------------------------------|--------------|
| Accrued Interest from 09/27/2000 to 09/27/2000..... | (128,500.00) |
| Bond Year Dollars.....                              | \$37,628.99  |
| Average Life.....                                   | 12.543 Years |
| Average Coupon.....                                 | 2.6585082%   |
| Net Interest Cost (NIC).....                        | 2.6585082%   |
| True Interest Cost (TIC).....                       | 3.0218640%   |
| Bond Yield for Arbitrage Purposes.....              | 3.0218640%   |
| All Inclusive Cost (AIC).....                       | 3.0218640%   |

**IRS FORM 8038**

|                                |              |
|--------------------------------|--------------|
| Net Interest Cost.....         | 3.0000003%   |
| Weighted Average Maturity..... | 12.543 Years |

*Ferris, Baker Watts, Incorporated*  
*Public Finance*

*File - IF City of Martinsburg.sj-9 14 00- SINGLE PURPOSE*

*9/14/2000 2:53 PM*

**SPECIMEN**

## ASSIGNMENT

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

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

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

In the presence of:

\_\_\_\_\_

SPECIMEN

**UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CITY OF MARTINSBURG  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,  
SERIES 2000C  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)**

No. CR-1

\$ 1,976,352

KNOW ALL MEN BY THESE PRESENTS: That CITY OF MARTINSBURG, a municipal corporation and political subdivision of the State of West Virginia in Berkeley County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of ONE MILLION NINE HUNDRED SEVENTY-SIX THOUSAND THREE HUNDRED FIFTY-TWO DOLLARS (\$1,976,352), in annual installments on October 1 of each year, commencing on October 1, 2001, as set forth on the "Debt Service Schedule" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefor, and until payment of such installment, and such interest shall be payable semiannually on April 1 and October 1 in each year, commencing April 1, 2001. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Bond Legislation) on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may only 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 upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement between the Issuer and the Authority, dated September 27, 2000.

This Bond is issued (i) to permanently finance a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public combined waterworks and sewerage facilities of the Issuer (the "Project"); (ii) to fund a debt service reserve account for the Bonds; and (iii) to pay certain costs of

issuance hereof and related costs. The existing public combined waterworks and sewerage facilities of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), an Ordinance duly enacted by the Issuer on September 14, 2000, and effective September 25, 2000, and a Supplemental Resolution duly adopted by the Issuer on September 25, 2000 (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other securities provided for the Bonds of this Series (the "Bonds") under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH (1) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1995, OF THE ISSUER, DATED SEPTEMBER 1, 1995, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$3,645,000 (THE "SERIES 1995 BONDS"); (2) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2000A (WEST VIRGINIA DWTRF PROGRAM), OF THE ISSUER, DATED SEPTEMBER 27, 2000, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$7,544,000 (THE "SERIES 2000A BONDS"); AND (3) THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2000B (WEST VIRGINIA INFRASTRUCTURE FUND), OF THE ISSUER, DATED SEPTEMBER 27, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,000,000 (THE "SERIES 2000B BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the System, on a parity with the pledge of the Gross Revenues in favor of the holders of the Series 1995 Bonds, the Series 2000A Bonds and the Series 2000B Bonds, and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2000C Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross 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 an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 2000C Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services

rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% (120% so long as the Series 1995 Bonds remain Outstanding) of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Series 1995 Bonds, Series 2000A Bonds and the Series 2000B Bonds, provided however, that when the Series 1995 Bonds are no longer Outstanding and so long as there exists in the Series 2000C Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Series 2000A Bonds and the Series 2000B Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the

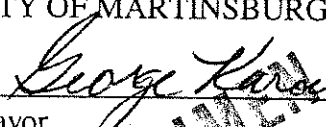
System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

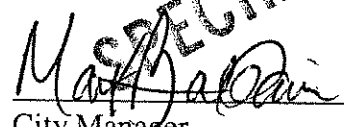
All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, CITY OF MARTINSBURG has caused this Bond to be signed by its Mayor and its City Manager and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated September 27, 2000.

[SEAL]

CITY OF MARTINSBURG

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Manager

ATTEST:

  
\_\_\_\_\_  
Recorder

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Bond is one of the Series 2000C Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: September 27, 2000.

ONE VALLEY BANK, NATIONAL ASSOCIATION,  
as Registrar

By

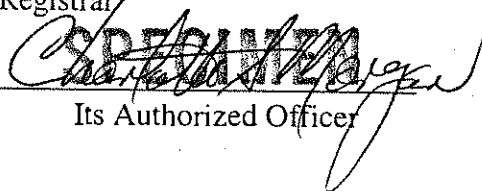
  
Its Authorized Officer

EXHIBIT A

DEBT SERVICE SCHEDULE

SPECIMEN

**City of Martinsburg (West Virginia)**  
*WDA Loan (Loan Program II, 1999 Series A) of \$1,976,352*  
*5.8% Interest Rate*  
*Closing Date: September 27, 2000*

**DEBT SERVICE SCHEDULE**

| Date       | Principal | Coupon | Interest  | Total P+I |
|------------|-----------|--------|-----------|-----------|
| 10/01/2000 | -         | -      | -         | -         |
| 4/01/2001  | -         | -      | 58,587.86 | 58,587.86 |
| 10/01/2001 | 14,303.00 | 5.800% | 57,314.21 | 71,617.21 |
| 4/01/2002  | -         | -      | 56,899.42 | 56,899.42 |
| 10/01/2002 | 15,132.00 | 5.800% | 56,899.42 | 72,031.42 |
| 4/01/2003  | -         | -      | 56,460.59 | 56,460.59 |
| 10/01/2003 | 16,010.00 | 5.800% | 56,460.59 | 72,470.59 |
| 4/01/2004  | -         | -      | 55,996.30 | 55,996.30 |
| 10/01/2004 | 16,938.00 | 5.800% | 55,996.30 | 72,934.30 |
| 4/01/2005  | -         | -      | 55,505.10 | 55,505.10 |
| 10/01/2005 | 17,921.00 | 5.800% | 55,505.10 | 73,426.10 |
| 4/01/2006  | -         | -      | 54,985.39 | 54,985.39 |
| 10/01/2006 | 18,960.00 | 5.800% | 54,985.39 | 73,945.39 |
| 4/01/2007  | -         | -      | 54,435.55 | 54,435.55 |
| 10/01/2007 | 20,060.00 | 5.800% | 54,435.55 | 74,495.55 |
| 4/01/2008  | -         | -      | 53,853.81 | 53,853.81 |
| 10/01/2008 | 21,224.00 | 5.800% | 53,853.81 | 75,077.81 |
| 4/01/2009  | -         | -      | 53,238.32 | 53,238.32 |
| 10/01/2009 | 22,454.00 | 5.800% | 53,238.32 | 75,692.32 |
| 4/01/2010  | -         | -      | 52,587.15 | 52,587.15 |
| 10/01/2010 | 23,757.00 | 5.800% | 52,587.15 | 76,344.15 |
| 4/01/2011  | -         | -      | 51,898.20 | 51,898.20 |
| 10/01/2011 | 25,135.00 | 5.800% | 51,898.20 | 77,033.20 |
| 4/01/2012  | -         | -      | 51,169.28 | 51,169.28 |
| 10/01/2012 | 26,593.00 | 5.800% | 51,169.28 | 77,762.28 |
| 4/01/2013  | -         | -      | 50,398.09 | 50,398.09 |
| 10/01/2013 | 28,135.00 | 5.800% | 50,398.09 | 78,533.09 |
| 4/01/2014  | -         | -      | 49,582.17 | 49,582.17 |
| 10/01/2014 | 29,767.00 | 5.800% | 49,582.17 | 79,349.17 |
| 4/01/2015  | -         | -      | 48,718.93 | 48,718.93 |
| 10/01/2015 | 31,493.00 | 5.800% | 48,718.93 | 80,211.93 |
| 4/01/2016  | -         | -      | 47,805.63 | 47,805.63 |
| 10/01/2016 | 33,320.00 | 5.800% | 47,805.63 | 81,125.63 |
| 4/01/2017  | -         | -      | 46,839.35 | 46,839.35 |
| 10/01/2017 | 35,252.00 | 5.800% | 46,839.35 | 82,091.35 |
| 4/01/2018  | -         | -      | 45,817.04 | 45,817.04 |
| 10/01/2018 | 37,297.00 | 5.800% | 45,817.04 | 83,114.04 |
| 4/01/2019  | -         | -      | 44,735.43 | 44,735.43 |
| 10/01/2019 | 39,460.00 | 5.800% | 44,735.43 | 84,195.43 |
| 4/01/2020  | -         | -      | 43,591.09 | 43,591.09 |
| 10/01/2020 | 41,749.00 | 5.800% | 43,591.09 | 85,340.09 |
| 4/01/2021  | -         | -      | 42,380.37 | 42,380.37 |
| 10/01/2021 | 44,170.00 | 5.800% | 42,380.37 | 86,550.37 |
| 4/01/2022  | -         | -      | 41,099.44 | 41,099.44 |
| 10/01/2022 | 46,732.00 | 5.800% | 41,099.44 | 87,831.44 |
| 4/01/2023  | -         | -      | 39,744.21 | 39,744.21 |

**City of Martinsburg (West Virginia)**  
*WDA Loan (Loan Program II, 1999 Series A) of \$1,976,352*  
*5.8% Interest Rate*  
*Closing Date: September 27, 2000*

**DEBT SERVICE SCHEDULE**

| Date         | Principal           | Coupon   | Interest            | Total P+I           |
|--------------|---------------------|----------|---------------------|---------------------|
| 10/01/2023   | 49,443.00           | 5.800%   | 39,744.21           | 89,187.21           |
| 4/01/2024    | -                   | -        | 38,310.36           | 38,310.36           |
| 10/01/2024   | 52,310.00           | 5.800%   | 38,310.36           | 90,620.36           |
| 4/01/2025    | -                   | -        | 36,793.37           | 36,793.37           |
| 10/01/2025   | 55,344.00           | 5.800%   | 36,793.37           | 92,137.37           |
| 4/01/2026    | -                   | -        | 35,188.40           | 35,188.40           |
| 10/01/2026   | 58,554.00           | 5.800%   | 35,188.40           | 93,742.40           |
| 4/01/2027    | -                   | -        | 33,490.33           | 33,490.33           |
| 10/01/2027   | 61,950.00           | 5.800%   | 33,490.33           | 95,440.33           |
| 4/01/2028    | -                   | -        | 31,693.78           | 31,693.78           |
| 10/01/2028   | 65,544.00           | 5.800%   | 31,693.78           | 97,237.78           |
| 4/01/2029    | -                   | -        | 29,793.01           | 29,793.01           |
| 10/01/2029   | 69,345.00           | 5.800%   | 29,793.01           | 99,138.01           |
| 4/01/2030    | -                   | -        | 27,782.00           | 27,782.00           |
| 10/01/2030   | 73,367.00           | 5.800%   | 27,782.00           | 101,149.00          |
| 4/01/2031    | -                   | -        | 25,654.36           | 25,654.36           |
| 10/01/2031   | 77,622.00           | 5.800%   | 25,654.36           | 103,276.36          |
| 4/01/2032    | -                   | -        | 23,403.32           | 23,403.32           |
| 10/01/2032   | 82,124.00           | 5.800%   | 23,403.32           | 105,527.32          |
| 4/01/2033    | -                   | -        | 21,021.72           | 21,021.72           |
| 10/01/2033   | 86,888.00           | 5.800%   | 21,021.72           | 107,909.72          |
| 4/01/2034    | -                   | -        | 18,501.97           | 18,501.97           |
| 10/01/2034   | 91,927.00           | 5.800%   | 18,501.97           | 110,428.97          |
| 4/01/2035    | -                   | -        | 15,836.09           | 15,836.09           |
| 10/01/2035   | 97,259.00           | 5.800%   | 15,836.09           | 113,095.09          |
| 4/01/2036    | -                   | -        | 13,015.58           | 13,015.58           |
| 10/01/2036   | 102,900.00          | 5.800%   | 13,015.58           | 115,915.58          |
| 4/01/2037    | -                   | -        | 10,031.48           | 10,031.48           |
| 10/01/2037   | 108,868.00          | 5.800%   | 10,031.48           | 118,899.48          |
| 4/01/2038    | -                   | -        | 6,874.31            | 6,874.31            |
| 10/01/2038   | 115,182.00          | 5.800%   | 6,874.31            | 122,056.31          |
| 4/01/2039    | -                   | -        | 3,534.03            | 3,534.03            |
| 10/01/2039   | 121,863.00          | 5.800%   | 3,534.03            | 125,397.03          |
| <b>Total</b> | <b>1,976,352.00</b> | <b>-</b> | <b>3,053,232.01</b> | <b>5,029,584.01</b> |

Ferris, Baker Watts, Incorporated  
Public Finance

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**City of Martinsburg (West Virginia)**  
*WDA Loan (Loan Program II, 1999 Series A) of \$1,976,352*  
*5.8% Interest Rate*  
*Closing Date: September 27, 2000*

**DEBT SERVICE SCHEDULE**

**YIELD STATISTICS**

|                                        |              |
|----------------------------------------|--------------|
| Bond Year Dollars.....                 | \$52,641.93  |
| Average Life.....                      | 26.636 Years |
| Average Coupon.....                    | 5.8000001%   |
| Net Interest Cost (NIC).....           | 5.8000001%   |
| True Interest Cost (TIC).....          | 5.7999277%   |
| Bond Yield for Arbitrage Purposes..... | 5.7999277%   |
| All Inclusive Cost (AIC).....          | 5.7999277%   |

**IRS FORM 8038**

|                                |              |
|--------------------------------|--------------|
| Net Interest Cost.....         | 5.8000001%   |
| Weighted Average Maturity..... | 26.636 Years |

*Ferris, Baker Watts, Incorporated*  
*Public Finance*

*File = wdahs99.sf-Martinsburg- SINGLE PURPOSE*  
*9/21/2000 3:08 PM*

SPECIMEN

## ASSIGNMENT

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

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

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

SPECIMEN

In the presence of:

\_\_\_\_\_

1000 Technology Drive, Suite 2310  
Fairmont, West Virginia 26554  
Telephone (304) 368-4000

105 West Burke Street  
Martinsburg, West Virginia 25401  
Telephone (304) 263-0836

7000 Hampton Center, Suite K  
Morgantown, West Virginia 26505  
Telephone (304) 599-1390

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

Camden P. Siegrist  
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Facsimile — (304) 343-3058

**Bowles Rice  
McDavid Graff & Love PLLC**  
ATTORNEYS AT LAW

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Lexington, Kentucky 40507  
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475 H Street, NW, Suite 300  
Washington, D.C. 20001  
Telephone (202) 682-3711

E-mail Address:  
csiegris@bowlesrice.com

September 27, 2000

West Virginia Bureau for Public Health  
815 Quarrier Street, Suite 418  
Charleston, West Virginia 25301-2616

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311-1511

RE: City of Martinsburg  
Combined Waterworks and Sewerage System Revenue Bonds,  
Series 2000A (West Virginia DWTRF Program)

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance by the City of Martinsburg (the "Local Entity"), a municipal corporation and political subdivision of the State of West Virginia, of its \$7,564,000 Combined Waterworks and Sewerage System Revenue Bonds, Series 2000A (West Virginia DWTRF Program), dated the date hereof (the "Local Bonds").

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated September 27, 2000, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Local Entity and the West Virginia Water Development Authority (the "Authority"), acting under the direction of the West Virginia Bureau for Public Health (the "BPH") and (ii) the issuance of the Local Bonds, which are to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of \$7,564,000, issued initially 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

# Bowles Rice McDavid Graff & Love<sup>PLLC</sup>

West Virginia Bureau for Public Health  
West Virginia Water Development Authority  
September 27, 2000  
Page 2

and December 1 of each year, beginning June 1, 2002 and ending March 1, 2022, all as set forth in "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public combined waterworks and sewerage system of the Local Entity (the "Project"), (ii) funding a debt service reserve account for the Local Bonds and the Local Entity's Combined Waterworks and Sewerage System Revenue Bonds, Series 2000B (West Virginia Infrastructure Fund), and (iii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of Chapter 8, Article 20 and Chapter 16, Article 13C of the Code of West Virginia, 1931, as amended (collectively, the "Local Statute"), and the Bond Ordinance duly enacted by the Local Entity on September 14, 2000, and effective September 25, 2000, as supplemented by a Supplemental Resolution duly adopted by the Local Entity on September 25, 2000 (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

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

1. The Loan Agreement has been duly authorized by and executed on behalf of the Local Entity and is a valid and binding special obligation of the Local Entity enforceable in accordance with the terms thereof.
2. The Loan Agreement inures to the benefit of the Authority and the BPH and cannot be amended so as to affect adversely the rights of the Authority or the BPH or diminish the obligations of the Local Entity without the consent of the Authority and the BPH.
3. The Local Entity is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to construct and acquire the Project, to operate and maintain the System referred to in the Loan Agreement, to 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 Entity has legally and effectively enacted the Local Act and all other necessary orders and resolutions have been duly and effectively enacted by the Local Entity in

Bowles Rice  
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West Virginia Bureau for Public Health  
West Virginia Water Development Authority  
September 27, 2000  
Page 3

connection with the issuance and sale of the Local Bonds and constitute valid and binding obligations of the Local Entity enforceable against the Local Entity in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Local Entity to the Authority and are valid and legally enforceable special obligations of the Local Entity, payable from the Gross Revenues of the System referred to in the Local Act and secured by a first lien on and pledge of the Gross Revenues of said System, on a parity with (i) the Local Entity's outstanding Combined Waterworks and Sewerage System Revenue Bonds, Series 2000B (West Virginia Infrastructure Fund), dated the date hereof, issued in the original principal amount of \$3,000,000, (ii) the Local Entity's outstanding Combined Waterworks and Sewerage System Revenue Bonds, Series 2000C (West Virginia Water Development Authority), dated the date hereof, issued in the original principal amount of \$1,976,352, and (iii) the Local Entity's outstanding Combined Waterworks and Sewerage System Refunding Bonds, Series 1995, dated September 1, 1995, issued in the original principal amount of \$3,645,000, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, under the Local Statute, exempt from all taxation by the State of West Virginia, and any county, municipality, political subdivision or agency thereof.

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

We have examined the executed and authenticated Local Bond No. AR-1, and are of the opinion that the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

BOWLES RICE McDAVID GRAFF & LOVE, PLLC

*Bowles Rice McDavid Graff & Love, PLLC*

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Telephone (202) 682-3711

September 27, 2000

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West Virginia Infrastructure and  
Jobs Development Council  
980 One Valley Square  
Charleston, West Virginia 25301

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311-1511

RE: City of Martinsburg  
Combined Waterworks and Sewerage System Revenue Bonds,  
Series 2000B (West Virginia Infrastructure Fund)

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance by the City of Martinsburg (the "Governmental Agency"), a municipal corporation and political subdivision of the State of West Virginia, of its \$3,000,000 Combined Waterworks and Sewerage System Revenue Bonds, Series 2000B (West Virginia Infrastructure Fund), dated the date hereof (the "Local Bonds").

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated September 27, 2000, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") and (ii) the issuance of the Local Bonds, which are to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of \$3,000,000, issued initially 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,

# Bowles Rice McDavid Graff & Love<sub>PLLC</sub>

West Virginia Infrastructure and  
Jobs Development Council  
West Virginia Water Development Authority  
September 27, 2000  
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September 1 and December 1 of each year, beginning June 1, 2002 and ending March 1, 2022, as set forth in "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing combined waterworks and sewerage system of the Governmental Agency (the "Project"), and (ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of Chapter 8, Article 20 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Local Statute"), and the Bond Ordinance duly enacted by the Governmental Agency on September 14, 2000, and effective September 25, 2000, as supplemented by a Supplemental Resolution duly adopted by the Governmental Agency on September 25, 2000 (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

In connection with the issuance of the Local Bonds, the Governmental Agency has executed a Certificate as to Arbitrage, dated as of the date hereof (the "Certificate as to Arbitrage"), which, among other things, sets forth restrictions on the investment and expenditure of the Bond proceeds and earnings thereon, to ensure that the arbitrage requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code"), necessary to establish and maintain the excludability of interest on the Local Bonds from gross income for federal income tax purposes, are and will continue to be met.

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

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

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

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West Virginia Infrastructure and  
Jobs Development Council  
West Virginia Water Development Authority  
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3. The Governmental Agency is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to construct and acquire the Project, to operate and maintain the System referred to in the Loan Agreement, to 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 Governmental Agency has legally and effectively enacted the Local Act and all other necessary orders and resolutions have been duly and effectively enacted by the Governmental Agency in connection with the issuance and sale of the Local Bonds and constitute valid and binding obligations of the Governmental Agency enforceable against the Governmental Agency in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Governmental Agency to the Authority and are valid and legally enforceable special obligations of the Governmental Agency, payable from the Gross Revenues of the System referred to in the Local Act and secured by a first lien on and pledge of the Gross Revenues of said System, on a parity with (i) the Governmental Agency's outstanding Combined Waterworks and Sewerage System Revenue Bonds, Series 2000A (West Virginia DWTRF Program), dated the date hereof, issued in the original principal amount of \$7,564,000, (ii) the Governmental Agency's outstanding Combined Waterworks and Sewerage System Revenue Bonds, Series 2000C (West Virginia Water Development Authority), dated the date hereof, issued in the original principal amount of \$1,976,352, and (iii) the Governmental Agency's outstanding Combined Waterworks and Sewerage System Refunding Bonds, Series 1995, dated September 1, 1995, issued in the original principal amount of \$3,645,000, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, under the Local Statute, exempt from all taxation by the State of West Virginia, and any county, municipality, political subdivision or agency thereof.

7. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Local Bonds (a) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to the Code and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations under the Code. It should be noted, however, that interest on the Local Bonds is included in the adjusted current earnings of certain corporation for purposes of computing the alternative minimum tax that may be imposed with respect to corporations. The opinions set forth

Bowles Rice  
McDavid Graff & Love<sub>PLLC</sub>

West Virginia Infrastructure and  
Jobs Development Council  
West Virginia Water Development Authority  
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Page 4

above are subject to the condition that the Governmental Agency comply, on a continuous basis, with all requirements of the Code that must be satisfied subsequent to the issuance of the Local Bonds in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The Governmental Agency has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest on the Local Bonds in gross income for federal income tax purposes to be retroactive to the date of issuance of the Local Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Local Bonds.

8. Based upon the certifications of the Issuer set forth in the Certificate as to Arbitrage and under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the proceeds of the Local Bonds are not subject to the arbitrage rebate requirements set forth in Section 148(f) of the Code. The opinion set forth above is subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code relating to the applicable exceptions to rebate. The Issuer has covenanted to comply with all such requirements. Failure to comply with such requirements could cause proceeds of the Local Bonds to be subject to such arbitrage rebate requirements retroactive to the date of issuance of the Local Bonds.

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

We have examined the executed and authenticated Local Bond No. BR-1, and are of the opinion that the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

BOWLES RICE McDAVID GRAFF & LOVE, PLLC

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September 27, 2000

E-mail Address:  
csiegris@bowlesrice.com

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311-1511

RE: City of Martinsburg  
Combined Waterworks and Sewerage System Revenue Bonds,  
Series 2000C (West Virginia Water Development Authority)

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance by the City of Martinsburg (the "Governmental Agency"), a municipal corporation and political subdivision of the State of West Virginia, of its \$1,976,352 Combined Waterworks and Sewerage System Revenue Bonds, Series 2000C (West Virginia Water Development Authority), dated the date hereof (the "Local Bonds").

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated September 27, 2000, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency and the West Virginia Water Development Authority (the "Authority"), and (ii) the issuance of the Local Bonds, which are to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of \$1,976,352, issued initially in the form of one bond, registered as to principal and interest to the Authority, with interest payable semiannually on April 1 and October 1 of each year, commencing April 1, 2001, at the rate of 5.8% per annum and with principal payable annually on October 1 of each year, commencing October 1, 2001, all as set forth in "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing

# Bowles Rice McDavid Graff & Love<sub>PLLC</sub>

West Virginia Water Development Authority  
September 27, 2000  
Page 2

combined waterworks and sewerage system of the Governmental Agency (the "Project"), (ii) funding a debt service reserve account for the Local Bonds, and (iii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of Chapter 8, Article 20 and Chapter 22C, Article 1 of the Code of West Virginia, 1931, as amended (collectively, the "Local Statute"), and the Bond Ordinance duly enacted by the Governmental Agency on September 14, 2000, and effective September 25, 2000, as supplemented by a Supplemental Resolution duly adopted by the Governmental Agency on September 25, 2000 (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

In connection with the issuance of the Local Bonds, the Governmental Agency has executed a Certificate as to Arbitrage, dated as of the date hereof (the "Certificate as to Arbitrage"), which, among other things, sets forth restrictions on the investment and expenditure of the Bond proceeds and earnings thereon, to ensure that the arbitrage requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code"), necessary to establish and maintain the excludability of interest on the Local Bonds from gross income for federal income tax purposes, are and will continue to be met.

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

1. The Loan Agreement has been duly authorized by and executed on behalf of the Governmental Agency and is a valid and binding special obligation of the Governmental Agency enforceable in accordance with the terms thereof.
2. The Loan Agreement inures to the benefit of the Authority and cannot be amended so as to affect adversely the rights of the Authority or diminish the obligations of the Governmental Agency without the consent of the Authority.
3. The Governmental Agency is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to construct and acquire the Project, to operate and maintain the System referred to in the Loan Agreement, to enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

# Bowles Rice McDavid Graff & Love<sub>PLLC</sub>

West Virginia Water Development Authority  
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4. The Governmental Agency has legally and effectively enacted the Local Act and all other necessary orders and resolutions have been duly and effectively enacted by the Governmental Agency in connection with the issuance and sale of the Local Bonds and constitute valid and binding obligations of the Governmental Agency enforceable against the Governmental Agency in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Governmental Agency to the Authority and are valid and legally enforceable special obligations of the Governmental Agency, payable from the Gross Revenues of the System referred to in the Local Act and secured by a first lien on and pledge of the Gross Revenues of said System, on a parity with (i) the Governmental Agency's outstanding Combined Waterworks and Sewerage System Revenue Bonds, Series 2000A (West Virginia DWTRF Program), dated the date hereof, issued in the original principal amount of \$7,564,000, (ii) the Governmental Agency's outstanding Combined Waterworks and Sewerage System Revenue Bonds, Series 2000B (West Virginia Infrastructure Fund), dated the date hereof, issued in the original principal amount of \$3,000,000, and (iii) the Governmental Agency's outstanding Combined Waterworks and Sewerage System Refunding Revenue Bonds, Series 1995, dated September 1, 1995, issued in the original principal amount of \$3,645,000, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, under the Local Statute, exempt from all taxation by the State of West Virginia, and any county, municipality, political subdivision or agency thereof.

7. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Local Bonds (a) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to the Code and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations under the Code. It should be noted, however, that interest on the Local Bonds is included in the adjusted current earnings of certain corporation for purposes of computing the alternative minimum tax that may be imposed with respect to corporations. The opinions set forth in the preceding sentences are subject to the condition that the Governmental Agency comply, on a continuous basis, with all requirements of the Code that must be satisfied subsequent to the issuance of the Local Bonds in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The Governmental Agency has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest on the Local Bonds in gross income for federal income tax purposes to be retroactive to the date of issuance of the Local Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Local Bonds.

# Bowles Rice McDavid Graff & Love<sub>PLLC</sub>

West Virginia Water Development Authority  
September 27, 2000  
Page 4

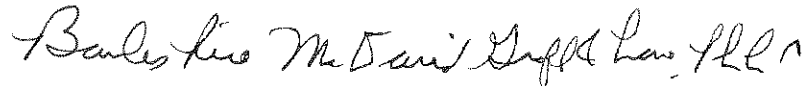
8. Based upon the certifications of the Issuer set forth in the Certificate as to Arbitrage and under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the proceeds of the Local Bonds are not subject to the arbitrage rebate requirements set forth in Section 148(f) of the Code. The opinion set forth above is subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code relating to the applicable exceptions to rebate. The Issuer has covenanted to comply with all such requirements. Failure to comply with such requirements could cause proceeds of the Local Bonds to be subject to such arbitrage rebate requirements retroactive to the date of issuance of the Local Bonds.

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

We have examined the executed and authenticated Local Bond No. CR-1, and are of the opinion that the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

BOWLES RICE McDAVID GRAFF & LOVE, PLLC



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City of Martinsburg  
232 North Queen Street  
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West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311-1511

West Virginia Bureau for Public Health  
815 Quarrier Street, Suite 418  
Charleston, West Virginia 25301-2616

West Virginia Infrastructure and  
Jobs Development Council  
980 One Valley Square  
Charleston, West Virginia 25301

RE: City of Martinsburg  
Combined Waterworks and Sewerage System Revenue Bonds,  
Series 2000A (West Virginia DWTRF Program)  
Series 2000B (West Virginia Infrastructure Fund)  
Series 2000C (West Virginia Water Development Authority)

Ladies and Gentlemen:

We are counsel to the City of Martinsburg, a municipal corporation and political subdivision of the State of West Virginia, in Berkeley County, West Virginia (the "Issuer"). As such counsel, we have examined a copy of (i) the Drinking Water Treatment Revolving Fund Loan Agreement dated September 27, 2000, by and between the West Virginia Water Development Authority (the "Authority"), acting under the direction of the West Virginia Bureau for Public Health ("BPH") and the Issuer with respect to the above-referenced series of bonds designated Series 2000A (West Virginia DWTRF Program); (ii) the Loan Agreement dated September 27, 2000, by and between the

# Bowles Rice McDavid Graff & Love<sub>PLLC</sub>

September 27, 2000

Page 2

Authority, acting on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") and the Issuer with respect to the above-referenced series of bonds designated Series 2000B ("West Virginia Infrastructure Fund"); (iii) the Loan Agreement dated September 27, 2000, by and between the Authority and the Issuer with respect to the above-referenced series of bonds designated Series 2000C (West Virginia Water Development Authority) (the Loan Agreements described in (i) through (iii) are referred to herein as the "Loan Agreements"); (iv), the Bond Ordinance duly enacted by the Issuer on September 14, 2000, and put into effect following a public hearing on September 25, 2000, as supplemented and amended by a Supplemental Resolution adopted by the Issuer on September 25, 2000 (collectively, the "Local Act"); and (v) other documents, papers, agreements, instruments and certificates relating to the above-captioned Bonds of the Issuer (collectively, the "Bonds"). Terms used in said Local Act and the above-described Loan Agreements and not otherwise defined herein have the same meanings herein.

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 Issuer is duly created and validly existing as a municipal corporation and political subdivision of the State of West Virginia, and the Mayor, City Manager, Recorder and members of the Council of the Issuer have been duly and properly elected or appointed as applicable, have taken the requisite oaths, and are authorized to act on behalf of the Issuer in their respective capacities.
2. The Loan Agreements have been duly authorized, executed and delivered by the Issuer, and assuming due authorization, execution and delivery by the Authority constitute the valid and binding agreements of the Issuer, enforceable in accordance with their respective terms.
3. The Local Act has been duly enacted and adopted by the Issuer and is in full force and effect.
4. The execution and delivery of the Bonds and the Loan Agreements and the consummation of the transactions contemplated by the Bonds, the Loan Agreements, and the Local Act, and the carrying out of the terms thereof, do not and will not in any material respect conflict with or constitute on the part of the Issuer a breach of or default under any ordinance, resolution, agreement, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.
5. The Issuer has received, or there have been entered, all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and

# Bowles Rice McDavid Graff & Love<sub>PLLC</sub>

September 27, 2000

Page 3

existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges, including, without limitation, all requisite orders, consents, certificates and approvals from the Council and the Issuer 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, provided that no opinion is given with respect to any required approvals of the Public Service Commission of West Virginia and your attention is directed to the opinion of Jackson & Kelly PLLC which opines with respect to this matter. The opinion set forth in this paragraph is given subject to the following matters:

- (a) The lease with Capitol Cement Corporation whereby the Issuer is to lease a part of the real estate upon which the Big Springs water treatment plant is to be located has not yet been signed by Capitol Cement Corporation or the Issuer, but is in the final stages of negotiation and is expected to be finalized and recorded in the Berkeley County Clerk's office within two weeks. It is the opinion of the undersigned that in the event Capitol Cement Corporation and the Issuer do not reach agreement on the lease that the Issuer has the legal authority to obtain the necessary property from the Capitol Cement Corporation by condemnation (eminent domain).
- (b) This opinion is given with the understanding and representation that the easements acquired through this date are those easements sufficient to enable the completion of Phase 1 of the project, that is the construction of the water plants and water tower. The Issuer has not yet obtained the easements for Phase 2 of the project for which a closing will be held at a later date, Phase 2 of the project to include easements for installation and maintenance of the water lines.
- (c) This opinion is given with the understanding and representation that the Issuer will have to satisfy the site plan review requirements and storm water management requirements of the Berkeley County, West Virginia Planning Commission.

# Bowles Rice McDavid Graff & Love<sub>PLLC</sub>

September 27, 2000

Page 4

6. There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreements, the Bonds, the Local Act, the acquisition and construction of the Project, the operation of the System or the validity of the Bonds or the collection or pledge of the Gross Revenues therefor, subject to and with the exception to the matters set forth in paragraph 5 sections (a), (b) and (c) of this opinion.

This opinion may be relied upon by all counsel to the transaction as if specifically addressed thereto.

Very truly yours,

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September 27, 2000

West Virginia Infrastructure and Jobs Development Council  
980 One Valley Square  
Charleston, WV 25301

West Virginia Bureau for Public Health  
Office of Environmental Health Services  
815 Quarrier Street, Suite 418  
Charleston, West Virginia 25301

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

Re: City of Martinsburg Water System Improvements

Ladies and Gentlemen:

This firm represents the City of Martinsburg, West Virginia (the "Issuer") with regard to a proposed project to construct City of Martinsburg Water System Improvements (the "Project"), and provides this final title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Infrastructure and Jobs Development Council (the "WVIJDC"), West Virginia Bureau For Public Health (the "BPH") and West Virginia Water Development Authority (the "WVWDA") 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 to construct, operate and maintain the Project as approved by the WVIJDC, the BPH and the WVWDA.

2. The Issuer has obtained all necessary permits and approvals for the construction of the Project, subject to and except for the further site plan review requirements and storm water management requirements of the Berkeley County, West Virginia, Planning Commission.

# Bowles Rice McDavid Graff & Love<sup>PLLC</sup>

September 27, 2000

Page 2

3. We have investigated and ascertained the location of, and are familiar with the legal description of, the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Chester Engineers, the consulting engineers for the Project.

4. We have examined the records on file in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, the county in which the Project is to be located, and, in our opinion, the Issuer has acquired legal title or such other estate or interest in all of the necessary site components for the Project, including all easements and/or rights of way, sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the Project, subject to and with the exception of the following: the lease with Capitol Cement Corporation whereby the City of Martinsburg is to lease a part of the real estate upon which the Big Springs water treatment plant is to be located has not yet been signed by Capitol Cement Corporation or the City of Martinsburg, but is in the final stages of negotiation and is expected to be finalized and recorded in the Berkeley County Clerk's office within two weeks. It is the opinion of the undersigned that in the event Capitol Cement Corporation and the City of Martinsburg do not reach agreement on the lease that the City of Martinsburg has the legal authority to obtain the necessary property from the Capitol Cement Corporation by condemnation (eminent domain).

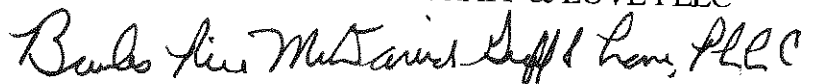
This opinion is given with the understanding and representation that the easements acquired through this date are those easements sufficient to enable the completion of Phase 1 of the project, that is the construction of the water plants and water tower. The City of Martinsburg has not yet obtained the easements for Phase 2 of the project for which a closing will be held at a later date, Phase 2 of the project to include easements for installation and maintenance of the water lines.

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

If you have any questions regarding any of the information contained in this final title opinion, or need anything further, please do not hesitate to let me know.

Very truly yours,

BOWLES RICE MCDAVID GRAFF & LOVE PLLC



JOS/jjl

# JACKSON & KELLY PLLC

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DENVER, COLORADO 80264  
TELEPHONE 303-390-0003

175 EAST MAIN STREET  
LEXINGTON, KENTUCKY 40585  
TELEPHONE 859-255-9500

2401 PENNSYLVANIA AVENUE N.W.  
WASHINGTON, D.C. 20037  
TELEPHONE 202-973-0200

MEMBER OF LEX MUNDI,  
THE WORLD'S LEADING ASSOCIATION  
OF INDEPENDENT LAW FIRMS.

September 27, 2000

City of Martinsburg  
232 North Queen Street  
Martinsburg, West Virginia 25401

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311-1511

West Virginia Bureau for Public Health  
815 Quarrier Street, Suite 418  
Charleston, West Virginia 25301-2616

West Virginia Infrastructure and  
Jobs Development Council  
980 One Valley Square  
Charleston, West Virginia 25301

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

RE: City of Martinsburg  
Combined Waterworks and Sewerage System Revenue Bonds,  
Series 2000A (West Virginia DWTRF Program)  
Series 2000B (West Virginia Infrastructure Fund)  
Series 2000C (West Virginia Water Development Authority)

Ladies and Gentlemen:

We are special counsel to the City of Martinsburg, a municipal corporation and political subdivision of the State of West Virginia, in Berkeley County, West Virginia (the "Issuer"), and have

City of Martinsburg  
West Virginia Water Development Authority  
West Virginia Bureau of Public Health  
West Virginia Infrastructure and Job  
Development Council  
Bowles Rice McDavid Graff & Love, PLLC  
September 27, 2000  
Page 2

represented the Issuer in connection with the proceedings before the Public Service Commission of West Virginia (the "PSC") relating to the Project to be financed in part with proceeds of the above-referenced Bonds of the Issuer (the "Bonds").

As such counsel, we are of the opinion as follows:

The Issuer has received the Commission Order of the PSC entered June 13, 2000, in Case No. 00-0330-W-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project, the time for appeal of which has expired prior to the date hereof without any appeal. The Issuer has also received the Commission Order of the PSC entered September 22, 2000, in said case, approving additional costs and borrowing for the Project. The time for appeal of such Commission Order has not expired prior to the date hereof. However, the parties to such Commission Order have stated that they will not appeal such Commission Order. Such Commission Order is not subject to any appeal, further hearing, reopening or rehearing by any customer, protestant, intervenor or other person not a party to the original application.

This opinion may be relied upon by all counsel to the transaction as if specifically addressed thereto.

Very truly yours,

*Jackson & Kelly PLLC*

**WV MUNICIPAL BOND COMMISSION**

Suite ~~200~~ 500

~~8111 Queen Street~~ 8 Capitol Street  
Charleston, WV 25301  
(304) 558-3971

**NEW ISSUE REPORT FORM**

Date of Report: September 27, 2000

(See Reverse for Instructions)

ISSUER & ISSUE: City of Martinsburg Combined Waterworks and Sewerage System Revenue Bonds  
Series 2000A (West Virginia DWTRF Program)

ADDRESS: 232 North Queen Street, Martinsburg, WV 25401 COUNTY: Berkeley

PURPOSE OF NEW ISSUE: New Money ☒  
Refunding ☐ Refunds issue(s) dated: \_\_\_\_\_

ISSUE DATE: September 27, 2000 CLOSING DATE: September 27, 2000  
ISSUE AMOUNT: \$ 7,564,000 RATE: 2% Admin. Fee: 1%  
1st DEBT SERVICE DUE: June 1, 2002 1st PRINCIPAL DUE: June 1, 2002  
1st DEBT SERVICE AMOUNT: \$ 114,950 PAYING AGENT: Municipal Bond Commission

|                                                                                                                                                                      |                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| ISSUER'S BOND COUNSEL: <u>Bowles Rice McDavid</u><br><u>Graff &amp; Love, PLLC</u><br>Contact Person: <u>Camden P Siegrist, Esq.</u><br>Phone: <u>(304) 347-1129</u> | UNDERWRITER'S BOND COUNSEL: <u>Jackson &amp; Kelly, PLLC</u><br>Contact Person: <u>Samme L. Gee, Esq.</u><br>Phone: <u>(304) 340-1318</u> |
| CLOSING BANK: <u>Jefferson Security Bank</u><br>Contact Person: <u>Vickie A. Cave</u><br>Phone: <u>(304) 876-9033</u>                                                | ESCROW TRUSTEE: _____<br>Contact Person: _____<br>Phone: _____                                                                            |
| KNOWLEDGEABLE ISSUER CONTACT: _____<br>Contact Person: <u>Mark Baldwin</u><br>Position: <u>City Manager</u><br>Phone: <u>(304) 264-2131</u>                          | OTHER: _____<br>Contact Person: _____<br>Function: _____<br>Phone: _____                                                                  |

|                                                    |                              |                   |
|----------------------------------------------------|------------------------------|-------------------|
| DEPOSITS TO MBC AT CLOSE:                          | Accrued Interest: _____ Days | \$ _____          |
| By <u><input checked="" type="checkbox"/> Wire</u> | Capitalized Interest:        | \$ _____          |
| <u><input type="checkbox"/> Check</u>              | Reserve Account:             | \$ <u>459,802</u> |
| <u><input type="checkbox"/> IGT</u>                | Other: _____                 | \$ _____          |

|                                         |                    |          |
|-----------------------------------------|--------------------|----------|
| REFUNDS & TRANSFERS BY MBC AT CLOSE:    | To Escrow Trustee: | \$ _____ |
| By <u><input type="checkbox"/> Wire</u> | To Issuer:         | \$ _____ |
| <u><input type="checkbox"/> Check</u>   | To Other: _____    | \$ _____ |
| <u><input type="checkbox"/> IGT</u>     |                    |          |

NOTES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FOR MUNICIPAL BOND COMMISSION USE ONLY:**  
DOCUMENTS REQUIRED: \_\_\_\_\_  
TRANSFERS REQUIRED: \_\_\_\_\_

**WV MUNICIPAL BOND COMMISSION**

Suite ~~300~~ 500

~~812 Quarter Street~~ 8 Capitol Street

Charleston, WV 25301

(304) 558-3971

**NEW ISSUE REPORT FORM**

Date of Report: September 27, 2000

(See Reverse for Instructions)

ISSUER & ISSUE: City of Martinsburg Combined Waterworks and Sewerage System Revenue Bonds  
Series 2000B (West Virginia Infrastructure Fund)

ADDRESS: 232 North Queen Street, Martinsburg, WV 25401 COUNTY: Berkeley

PURPOSE OF  
NEW ISSUE: New Money X  
Refunding     

Refunds issue(s) dated:                     

ISSUE DATE: September 27, 2000

CLOSING DATE: September 27, 2000

ISSUE AMOUNT: \$ 3,000,000

RATE: 3%

1st DEBT SERVICE DUE: June 1, 2002

1st PRINCIPAL DUE: June 1, 2002

1st DEBT SERVICE AMOUNT: \$ 50,005.00

PAYING AGENT: Municipal Bond Commission

ISSUER'S  
BOND COUNSEL: Bowles Rice McDavid  
Graff & Love, PLLC  
Contact Person: Camden P. Siegrist, Esq.  
Phone: (304) 347-1129

UNDERWRITER'S  
BOND COUNSEL: Jackson & Kelly, PLLC  
Contact Person: Samme L. Gee, Esq.  
Phone: (304) 340-1318

CLOSING BANK: Jefferson Security Bank  
Contact Person: Vickie A. Cave  
Phone: (304) 876-9033

ESCROW TRUSTEE:  
Contact Person:                       
Phone:                     

KNOWLEDGEABLE ISSUER CONTACT:  
Contact Person: Mark Baldwin  
Position: City Manager  
Phone: (304) 264-2131

OTHER:  
Contact Person:                       
Function:                       
Phone:                     

|                           |                                                    |                                |
|---------------------------|----------------------------------------------------|--------------------------------|
| DEPOSITS TO MBC AT CLOSE: | Accrued Interest: <u>                    </u> Days | \$ <u>                    </u> |
| By <u>X</u> Wire          | Capitalized Interest:                              | \$ <u>                    </u> |
| <u>    </u> Check         | Reserve Account:                                   | \$ <u>200,019*</u>             |
| <u>    </u> IGT           | Other: <u>                    </u>                 | \$ <u>                    </u> |

|                                      |                                       |                                |
|--------------------------------------|---------------------------------------|--------------------------------|
| REFUNDS & TRANSFERS BY MBC AT CLOSE: | To Escrow Trustee:                    | \$ <u>                    </u> |
| By <u>    </u> Wire                  | To Issuer:                            | \$ <u>                    </u> |
| <u>    </u> Check                    | To Other: <u>                    </u> | \$ <u>                    </u> |
| <u>    </u> IGT                      |                                       |                                |

NOTES: \* To be funded from proceeds of the Series 2000A Bonds.

**FOR MUNICIPAL BOND COMMISSION USE ONLY:**

DOCUMENTS REQUIRED:                     

TRANSFERS REQUIRED:

## WV MUNICIPAL BOND COMMISSION

Suite ~~300~~ 500~~812 KANAWHA STREET~~ 8 Capitol Street

Charleston, WV 25301

(304) 558-3971

## NEW ISSUE REPORT FORM

Date of Report: September 27, 2000

(See Reverse for Instructions)

ISSUER & ISSUE: City of Martinsburg Combined Waterworks and Sewerage System Revenue Bonds Series 2000C (West Virginia Water Development Authority)ADDRESS: 232 North Queen Street, Martinsburg, WV 25401COUNTY: BerkeleyPURPOSE OF  
NEW ISSUE: New Money ☒  
Refunding ☐

Refunds issue(s) dated: \_\_\_\_\_

ISSUE DATE: September 27, 2000CLOSING DATE: September 27, 2000ISSUE AMOUNT: \$ 1,976,352RATE: 5.8%1st DEBT SERVICE DUE: April 1, 20011st PRINCIPAL DUE: October 1, 20011st DEBT SERVICE AMOUNT: \$ 58,587.86PAYING AGENT: Municipal Bond CommissionISSUER'S Bowles Rice McDavid

UNDERWRITER'S

BOND COUNSEL: Graff & Love, PLLCBOND COUNSEL: Jackson & Kelly, PLLCContact Person: Camden P. Siegrist, Esq.Contact Person: Samme L. Gee, Esq.Phone: (304) 347-1129Phone: (304) 340-1318CLOSING BANK: Jefferson Security Bank

ESCROW TRUSTEE:

Contact Person: Vickie A. Cave

Contact Person:

Phone: (304) 876-9033

Phone:

KNOWLEDGEABLE ISSUER CONTACT:

OTHER:

Contact Person: Mark Baldwin

Contact Person:

Position: City Manager

Function:

Phone: (304) 264-2131

Phone:

DEPOSITS TO MBC AT CLOSE:

Accrued Interest: \_\_\_\_\_ Days

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

By ☒ Wire

Capitalized Interest:

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

☐ Check

Reserve Account:

\$ 128,932☐ IGT

Other: \_\_\_\_\_

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

REFUNDS &amp; TRANSFERS BY MBC AT CLOSE:

By ☐ Wire

To Escrow Trustee:

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

☐ Check

To Issuer:

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

☐ IGT

To Other: \_\_\_\_\_

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

NOTES: \_\_\_\_\_

FOR MUNICIPAL BOND COMMISSION USE ONLY:

DOCUMENTS REQUIRED: \_\_\_\_\_

TRANSFERS REQUIRED: \_\_\_\_\_

**CITY OF MARTINSBURG  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,**

**SERIES 2000A  
(WEST VIRGINIA DWTRF PROGRAM)**

**SERIES 2000B  
(WEST VIRGINIA INFRASTRUCTURE FUND)**

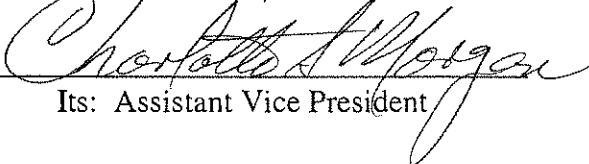
**SERIES 2000C  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)**

**ACCEPTANCE OF DUTIES OF REGISTRAR**

One Valley Bank, National Association, a national banking association with offices in the City of Charleston, West Virginia, hereby accepts appointment as Registrar in connection with the City of Martinsburg Combined Waterworks and Sewerage System Revenue Bonds, Series 2000A (West Virginia DWTRF Program), dated September 27, 2000, in the principal amount of \$7,564,000, Series 2000B (West Virginia Infrastructure Fund), dated September 27, 2000, in the principal amount of \$3,000,000, and Series 2000C (West Virginia Water Development Authority), dated September 27, 2000, in the principal amount of \$1,976,352 (collectively, the "Bonds") and agrees to perform all duties of Registrar in connection with the Bonds, all as set forth in the Bond Legislation authorizing issuance of the Bonds.

Dated this 27th day of September, 2000.

ONE VALLEY BANK, NATIONAL ASSOCIATION

By   
Its: Assistant Vice President



**CITY OF MARTINSBURG  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS,**

**SERIES 2000A  
(WEST VIRGINIA DWTRF PROGRAM)**

**SERIES 2000B  
(WEST VIRGINIA INFRASTRUCTURE FUND)**

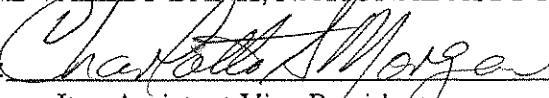
**SERIES 2000C  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)**

**CERTIFICATE OF REGISTRATION OF BONDS**

I, Charlotte S. Morgan, Assistant Vice President of One Valley Bank, National Association, as Registrar under the Bond Ordinance providing for the issuance of the above captioned bonds, hereby certifies that on the date hereof, the single, fully registered City of Martinsburg Combined Waterworks and Sewerage System Revenue Bond, Series 2000A (West Virginia DWTRF Program), dated September 27, 2000, in the principal amount of \$7,564,000, numbered AR-1; the single, fully registered City of Martinsburg Combined Waterworks and Sewerage System Revenue Bond, Series 2000B (West Virginia Infrastructure Fund), dated September 27, 2000, in the principal amount of \$3,000,000, numbered BR-1; and the single, fully registered City of Martinsburg Combined Waterworks and Sewerage System Revenue Bond, Series 2000C (West Virginia Water Development Authority), dated September 27, 2000, in the principal amount of \$1,976,352, numbered CR-1, were each 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 One Valley Bank, National Association, as Registrar.

WITNESS my signature as of this 27th day of September, 2000.

ONE VALLEY BANK, NATIONAL ASSOCIATION

By:   
Its: Assistant Vice President

## **REGISTRAR'S AGREEMENT**

THIS REGISTRAR'S AGREEMENT, dated as of the 27th day of September, 2000, by and between CITY OF MARTINSBURG, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and ONE VALLEY BANK, NATIONAL ASSOCIATION, a national banking association (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$7,564,000 Combined Waterworks and Sewerage System Revenue Bonds, Series 2000A (West Virginia DWTRF Program), \$3,000,000 Combined Waterworks and Sewerage System Revenue Bonds, Series 2000B (West Virginia Infrastructure Fund) and \$1,976,352 Combined Waterworks and Sewerage System Revenue Bonds, Series 2000C (West Virginia Water Development Authority), in fully registered forms (collectively the "Bonds"), pursuant to a Bond Ordinance enacted September 14, 2000, and put into effect following a public hearing held on September 25, 2000, and a Supplemental Resolution adopted September 25, 2000 (the "Local Act");

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 Local Act, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Local Act provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Local Act and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Local Act 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 Local Act, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer 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. For its fees and expenses hereunder, Registrar shall receive the amount of \$500 if a representative of Registrar attends the closing or \$250 if a representative of Registrar does not attend the closing, said fees and expenses to be payable upon the issuance of the Bonds.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Local Act with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Local Act, the terms of the Local Act 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 Local Act 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 addresses:

Issuer: City of Martinsburg  
232 North Queen Street  
Martinsburg, West Virginia 25401

Registrar: One Valley Bank, National Association  
One Valley Square  
Charleston, West Virginia 25301  
Attention: Corporate Trust Department

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Local Act.

IN WITNESS WHEREOF, CITY OF MARTINSBURG and ONE VALLEY BANK, NATIONAL ASSOCIATION, have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

CITY OF MARTINSBURG

By: Mark Baumann  
Its: City Manager

ONE VALLEY BANK,  
NATIONAL ASSOCIATION

By: Charlotte Morgan  
Its: Assistant Vice President

**EXHIBIT A**

**[See Tab Numbers 1 and 2]**

LOAN PROGRAM III  
REQUISITION AS TO LOAN TO GOVERNMENTAL AGENCY

TO: The Bank of New York, Trustee

- A. Name of Governmental Agency to which payment is to be made: City of Martinsburg (Berkeley, West Virginia)
- B. Par Amount: \$1,976,352.00
- C. Certification by Water Development Authority.

I hereby certify that under the terms and provisions of the Loan Agreement providing for the Loan to the above-captioned Governmental Agency, dated as of September 27, 2000, said Governmental Agency has sold its City of Martinsburg Combined Waterworks and Sewerage System Revenue Bonds, Series 2000C (West Virginia Water Development Authority) (the "Local Bonds") to the Authority in the principal amount equal to the amount of the Loan set forth in (B) above, that such Governmental Agency is obligated to make Local Bond Payments and to pay Fees and Charges in accordance with Sections 9.06 and 9.09 of the General Resolution and that such Governmental Agency is not in default under any of the terms or provisions of said Loan Agreement.

I further certify that the Local Bond Payments, and other moneys available therefor, will be sufficient to pay interest on and Principal Installments of the Local Bonds, the proceeds of which were used to fund the Loan Obligations, as such interest and Principal Installments come do.

The above certification complies with Subsections 6.05(3)(i) (ii) and (v) of the General Resolution.

  
\_\_\_\_\_  
Authorized Representative  
West Virginia Water Development Authority

DATE: September 27, 2000