



ARNOLD & BAILEY

ATTORNEYS AT LAW

S. Andrew Arnold, Esq. PARTNER
Gregory A. Bailey, Esq. PARTNER
J. Daniel Kirkland, Esq. ATTORNEY
Christopher P. Stroeck, Esq. ATTORNEY

208 N. George Street
Charles Town, WV 25414

T: 304 725 2002
F: 304 725 0282

VIA HAND-DELIVERY

April 12, 2019

Daryl Hennessy, City Manager
City of Charles Town
101 East Washington Street
Charles Town, WV 25414

Re: Rockwool Sewer Line Extension

Dear Mr. Hennessy:

Please be advised that I represent Jefferson County Vision, Inc. ("JCV") and many Charles Town citizens who have or will sign one (1) or both Petitions noting their protest against the recent approval of the Rockwool sewer line extension. I understand that the City Council adopted a related Ordinance, attached hereto as Exhibit 1, on March 18, 2019. I understand that the Building Commission adopted a related Ordinance, attached hereto as Exhibit 2, on March 19, 2019 (hereinafter "Governing Bodies").

In a recent email to JCV, you suggested that these Governing Bodies would not be giving post-adoption notice to the public of their right to protest these Ordinances.

The protest Petitions are being prepared pursuant to the express language in the attached Ordinances and applicable law. Both Petitions have or will contain the required percentage of freeholders and therefore must be recognized by both Governing Bodies that took action on the sewer line extension. Specifically, these protest Petitions now force a super-majority vote of both Governing Bodies in order to take further action on the subject Ordinances. If these protest Petitions are not recognized and accepted, my clients will seek immediate relief in the Circuit Court.

It is clear from the the titles of these Ordinances and the extensive deliberations that occurred before both Governing Bodies, that the actions taken on March 18 and 19 were final adoptions of the Ordinances in their entirety.¹ Based upon the express language in both Ordinances, "upon adoption," a Governing Body shall publish sufficient notice of the contents

¹ It has been suggested that one (1) or both Ordinances were "adopted" by these Governing Bodies at meetings that were held in 2018. If true, the public has been misled by the Ordinance titles and confusing deliberations that were held at the March meetings. Further, based upon my review of the legal advertisements published as related to both Ordinances, it does not appear that proper statutory notice requirements were met prior to any meetings held in 2018.

Daryl Hennessy, City Manager
April 12, 2019
Page 2

thereof once a week for two (2) successive weeks, with a protest hearing to then be held whereby interested persons can present their protests. It is at these protest hearings that these protest Petitions will be presented. The language in these Ordinances track the notice requirements and protest opportunity provided by statute. Please publish the statutory notice and schedule the protest hearings before both Governing Bodies as required.

Finally, it should be noted that Steptoe & Johnson, PLLC appear to be providing legal guidance to one or more Charles Town entities involved with the sewer line extension and other matters relating to Rockwool. I have questioned this firm's involvement based upon a potential conflict of interest. Specifically, upon information and belief, attorneys for Steptoe drafted certain documents of record related to the sale of the Rockwool parcel from Jefferson Orchards, Inc. to Rockwool. It appears that Steptoe represented either Rockwool or Jefferson Orchards or both during this transaction. I further understand that Jefferson Orchards remains the owner of certain undeveloped adjacent property. There is no doubt that the sewer line extension will benefit both Rockwool and Jefferson Orchards, to the potential detriment of Charles Town citizens. I would ask that this potential conflict issue be addressed.

I look forward to a prompt response so we can avoid unnecessary court intervention. I hope the City recognizes that its citizens must be heard and applicable law must be followed.

Very truly yours,



Christopher P. Stroeck, Esq.

cc (w/o Exhibits):

Charles Town City Council
Charles Town Building Commission
Mayor Scott Rogers
Jefferson County Vision, Inc.
Charles Town Protest Petitioners



City Council
101 East Washington Street
Charles Town, WV 25414

Meeting: 03/18/19 07:00 PM
Department: City Manager's Office
Category: Ordinance
Initiator: Daryl Hennessy

5.2

SCHEDULED

AGENDA ITEM (ID # 3252)

Second Reading and Final Consideration of an Ordinance Authorizing the Acquisition and Construction of a Public Sewerage System by the Charles Town Building Commission; Authorizing the Leasing of Such Property by the Building Commission to the City of Charles Town; Approving the Sale, Issuance and Delivery of Not to Exceed \$16,000,000 Lease Revenue Bonds, Series 2018 a (West Virginia Infrastructure Fund) by the Charles Town Building Commission to Provide Funds to Finance the Costs of Such Acquisition and Design, Acquisition, Construction and Equipping and Related Costs and Expenses; Prescribing the Forms and Authorizing the Execution and Delivery of an Agreement and Lease and Other Instruments and Authorizing and Approving Other Documents and Matters Relating to the Terms and Security of Such Series 2018 a Bonds; and Providing for Certain Other Matters in Connection Therewith.

This item was tabled at the March 4, 2019 city council meeting pending additional information from the Public Service Commission regarding the city's requirement to accept industrial waste. The Public Service Commission's general counsel has provided an informal opinion on the matter, which is attached. Also attached is an updated letter from Rockwool extending the time for CTUB to provide a Rule 5.5. cost estimate to March 22, 2019 and a letter from Ranson. All other attached items were included in the previous city council meeting package.

The proposed ordinance will allow for the issuance of up to \$16 million in bonds to finance the costs associated with the design, acquisition, construction, and equipping of a Route 9 sewer line. Since the time this ordinance was introduced, the estimated cost of the sewer line is expected to be closer to \$10.5 million.

Attachments

Attached to this agenda item are: (1) the PSC opinion, (2) the Rockwool extension letter, (3) the proposed ordinance, (4) a proposed lease and purchase agreement with the building commission, (5) the NPDES Permit Modification, (6) the WVDEP Responsiveness Summary, (7) a letter from the WV Development Office regarding the form of loan agreement, (8), a letter from Ranson on the Rockwool project, and (9) a resolution from the Charles Town Utility Board regarding the proposed state financing.

Ordinance Schedule

Updated: 3/15/2019 2:15 PM by Debbie Wilson



Page 1

Packet Pg. 29

The first reading of this ordinance occurred at the city council meeting on July 2, 2018. The public hearing for this ordinance occurred at the city council meeting on August 6, 2018. The city's building commission has also completed two readings and one public hearing related to an ordinance for financing the sewer line. The city council (March 4, 2019) and the building commission (March 5, 2019) both tabled this ordinance pending additional information from the Public Service Commission.

ATTACHMENTS:

- PSC Opinion (March 8, 2019) (PDF)
- Rockwool - Cost Estimate Extension (March 22, 2019) (PDF)
- Route 9 Sewer Project (\$16 million) - City Lease Ordinance (PDF)
- Building Commission and Charles Town Lease - Route 9 Sewer (PDF)
- NPDES Permit - Industrial User 2 Approval (Rockwool) (PDF)
- NPDES Permit - Public Comment Responses (PDF)
- WVDO - Form of Loan Agreement Letter(PDF)
- Ranson CT March 13 letter (PDF)
- CTUB Resolution 2019-01 Route 9 Sewer Project Funding (PDF)



Public Service Commission

Jessica M. Lane, General Counsel

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

Phone: (304) 340-0450
Fax: 304-340-3758
E-mail: jlane@psc.state.wv.us

March 8, 2019

Kristen M. Stolipher
Assistant Utility Manager
Charles Town Utility Board
108 West Congress Street
Charles Town, West Virginia 25414

Re: Charles Town Utility Board
Extension of Sewer Utility Service to Rockwool

Dear Ms. Stolipher:

I have reviewed your email to Public Service Commission Staff Engineer Jonathan Fowler and read press articles stemming from the March 4, 2019 Charles Town City Council meeting. This letter provides an informal opinion regarding two statements included in the West Virginia Department of Environmental Protection (WVDEP) Responsiveness Summary dated March 1, 2019, regarding a public hearing and public comments on modification of WV/NPDES Permit No. WV0022349.

The information provided in this response is not to be construed as an advisory or binding opinion of the Public Service Commission (Commission). The Commission does not provide those sorts of opinions. This letter, instead, represents my informal opinion as General Counsel to the Commission. I am not, however, authorized to speak on behalf of the Commissioners. This letter does not bind the Commission or its Staff in any future cases at the Commission or in any other forum.

In item fourteen of its Responsiveness Summary, the WVDEP responded to commenters who questioned whether Charles Town Utility Board (CTUB) was required to provide sewer service to Rockwool. The WVDEP indicated that (1) where feasible, the Commission may require CTUB to provide domestic sewer service to Rockwool and (2) it was their understanding that the Commission has not mandated CTUB to accept non-domestic wastewater from Rockwool.

The Commission has not mandated that CTUB extend service to Rockwool

Although the Commission has not mandated CTUB to provide any sewer utility service to Rockwool, CTUB is a public utility and has an obligation to provide utility

Attachment: PSC Opinion (March 8, 2019) (3252 : Route 9 Sewer Project - Lease Ordinance)

service. At the moment, the Commission has no case pending before it alleging that CTUB is refusing to extend service in violation of Commission rules or to meet its obligation to provide service as a public utility.

Public utility obligations regarding extension of sewer service

The CTUB is a public utility providing sewer service; therefore, the extension of sewer service provided by the CTUB is governed by the Rules for the Government of Sewer Utilities, 150 C.S.R. 5 (Sewer Rules). The Sewer Rules state that every public utility has a public service obligation to extend its mains, its plant and facilities to serve new customers. Sewer Rule 5.5 et seq. The WVDEP references to domestic and non-domestic wastewater implies that the service extension provisions of the Sewer Rules are different for commercial/industrial applicants for service and residential applicants for service. The manner in which sewer service is extended may be different for customers who produce industrial waste, but that does not eliminate the obligation to provide utility service to industrial customers who apply for service.

The Sewer Rules set forth specific steps that a utility is to take upon receiving a request for sewer utility service. A public utility is required to provide an estimate of the costs to provide service and other information on Sewer Form No. 5 (**attached**). If the applicant for service is willing to pay the customer share of the costs as calculated by the Sewer Rules, the utility must provide that service.

If a utility refuses to extend service, it must be prepared to show that the refusal is reasonable, i.e., an extension is physically impossible because there is no treatment capacity or it does not have the capability to treat the sewage that will be produced. Even in those circumstances, however, the utility has the obligation under the Sewer Rules to provide the applicant with an estimate of the costs to upgrade its facilities in order to make service available. Depending on the type of material that an industrial facility would deliver to a sewer treatment facility, there could be a need for special processing at the treatment plant or pre-treatment on the industrial site that should be considered by the sewer utility. The Commission understands, however, that special processing would not be required for the Rockwool wastewater because it will be comparable to standard domestic sewage.

Commission proceedings regarding service extension

As a municipal utility, CTUB is not required to obtain permission from the Commission to accept grants, borrow money or issue bonds to fund an upgrade or extension project. CTUB also does not need to obtain a certificate of convenience and necessity from the Commission in order to upgrade or extend its sewer system. If debt service for a project results in a need to increase utility rates, CTUB, as a locally rate

Kristen M. Stolipher
March 8, 2019
Page 3

regulated utility, may raise rates by municipal ordinance and, after the passage of Senate Bill 234 in 2015, customers have no avenue for appeal to the Commission.

If a supplier of sewer service is unwilling to provide service, an applicant for sewer service may file a formal complaint with the Commission. If the applicant challenges the utility cost estimate or share of the cost to be borne by the applicant or if the applicant believes the utility is unreasonably refusing to extend service, the Commission is empowered to address that complaint. Depending on the individual facts and circumstances of a specific case, Commission adjudication of a complaint may result in an order that a public utility extend service.

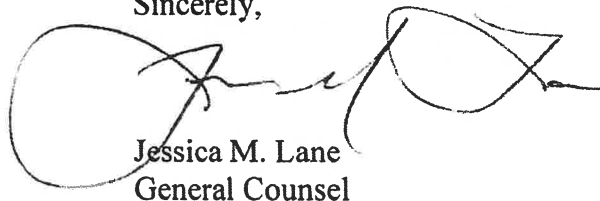
Alternate mainline extension agreement

If, after consultation with the utility, an applicant for service believes it could accomplish an extension more quickly or in a more cost-effective manner, the Sewer Rules provide that the applicant may enter into an alternate mainline extension agreement with the utility. Under an alternate mainline extension agreement, the applicant would normally construct the extension to the specifications of the utility and then transfer ownership of the facilities constructed by the applicant to the utility upon completion.

Finally, the WVDEP statements seem to imply that a public utility is not required to comply with the service extension provisions of the Sewer Rules unless the Commission has mandated it to do so. That is not the case. The obligation of a public utility, including a municipal utility, to comply with the public utility service extension provisions of the Sewer Rules is ongoing.

Please feel free to contact me at telephone number 304-340-0450 (or email me at jlane@psc.state.wv.us) if you have any questions regarding my informal opinion. Please feel free to share a copy of this letter with the Charles Town City Council.

Sincerely,



Jessica M. Lane
General Counsel

Enclosure: Sewer Form No. 5

Attachment: PSC Opinion (March 8, 2019) (3252 : Route 9 Sewer Project - Lease Ordinance)

Sewer Form No. 5
(Sewer Rule 5.5.e.2.)

Form for use in determining cost estimate to extend sewer service

Date _____

The following estimate is in response to a request to extend the Utility's sewer facilities approximately _____ feet along _____ to serve a customer or customers who desire sewer service.

Cost Estimate

Sewer line (-- inch PVC) _____	feet @ \$ _____/foot	= \$ _____
Excavation/installation _____	feet @ \$ _____/foot	= \$ _____
Materials (fittings, valves, stone, etc.)		= \$ _____
Permits/rights-of-way (Health, Highways, etc.)		= \$ _____
Restoration (seeding, gravel, etc.)		= \$ _____
Related cost (engineering, legal, etc.)		= \$ _____
TOTAL		= \$ _____

Cost Share of Customers and Utility

A. Total estimated cost of extension	\$ _____
B. Utility Share: (estimated total net revenue per customer calculated pursuant to Rule 5.5.e.4.) \$ _____ per customer	
x _____ customers =	\$ _____
C. Customer share: estimated cost to be paid by customers (A-B)	= \$ _____

Conditions

If the potential customers shall deposit with the Utility, in advance, the total sum of \$ _____, (customers share from "C" above), a tap fee of \$ _____ per customer, and a \$ _____ security deposit per customer, the Utility will apply for the necessary permit applications and begin construction as soon as possible.

If the actual cost to construct the extension is less than the estimated cost, the Utility will refund the difference to the original depositors. If the actual cost exceeds the estimated cost the Utility will bill the depositors for the difference.

The customers will be required to sign an application for service and/or a users agreement when the tap fees and deposits are made.

This main line extension estimate is made in accordance with Sewer Rule 5.5 of the *Rules for the Government of Sewer Utilities*.

Attachment: PSC Opinion (March 8, 2019) (3252 : Route 9 Sewer Project - Lease Ordinance)



March 12, 2019

Ms. Jane E. Arnett
Utility Manager
Charles Town Utility Board
832 S. George Street
Post Office Box 359
Charles Town, West Virginia 25414

Re: Roxul USA, Inc.
Request for Charles Town Utility Board to provide sanitary sewer service

Dear Ms. Arnett:

Roxul USA, Inc. ("Roxul") understands that the Charles Town Utility Board ("CTUB") is currently working with its engineer to prepare a response to Roxul's request, pursuant to Rule 5.5.e of the Public Service Commission of West Virginia's Rules for the Government of Sewer Utilities, for CTUB to provide sanitary sewer service to Roxul's property known as the Jefferson Orchards site. Roxul is appreciative of the amount of work necessary to prepare the response, thus by this letter, Roxul extends the 45 day time period for CTUB to respond to Roxul's service request to Friday, March 22, 2019. We look forward to receiving CTUB's written response reflecting its estimate of the cost to provide this requested service by March 22, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ken Cammarato', is written over the typed name and title.

Kenneth J. Cammarato
VP, General Counsel

cc: Daryl Hennessy, City of Charles Town
Hoy G. Shingleton, Jr., Esquire

Attachment: Rockwool - Cost Estimate Extension (March 22, 2019) (3252 : Route 9 Sewer Project - Lease Ordinance)

ORDINANCE OF THE CITY OF CHARLES TOWN

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF A PUBLIC SEWERAGE SYSTEM BY THE CHARLES TOWN BUILDING COMMISSION; AUTHORIZING THE LEASING OF SUCH PROPERTY BY THE BUILDING COMMISSION TO THE CITY OF CHARLES TOWN; APPROVING THE SALE, ISSUANCE AND DELIVERY OF NOT TO EXCEED \$16,000,000 LEASE REVENUE BONDS, SERIES 2018 A (WEST VIRGINIA INFRASTRUCTURE FUND) BY THE CHARLES TOWN BUILDING COMMISSION TO PROVIDE FUNDS TO FINANCE THE COSTS OF SUCH ACQUISITION AND DESIGN, ACQUISITION, CONSTRUCTION AND EQUIPPING AND RELATED COSTS AND EXPENSES; PRESCRIBING THE FORMS AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT AND LEASE AND OTHER INSTRUMENTS AND AUTHORIZING AND APPROVING OTHER DOCUMENTS AND MATTERS RELATING TO THE TERMS AND SECURITY OF SUCH SERIES 2018 A BONDS; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, pursuant to the authority of Chapter 8, Article 33 of the West Virginia Code of 1931, as amended (the "Act"), the City of Charles Town (the "City") created the Charles Town Building Commission (the "Issuer"), a public corporation with perpetual existence and a municipal building commission within the meaning of the Act;

WHEREAS, the Issuer under the Act has plenary power and authority to contract and be contracted with, acquire, purchase, own and hold any property, real or personal, and acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities of any type or types for which the City is permitted by law to expend public funds, sell, encumber or dispose of any property, real or personal, and lease its property or any part thereof, for public purposes, to such persons and upon such terms as the Issuer deems proper;

WHEREAS, the Issuer under the Act has plenary power and authority to issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided in the Act;

WHEREAS, the Issuer proposes to use the proceeds of the Series 2018 A Bonds, hereinafter defined and described, (i) to construct sewer lines and appurtenances to

serve Roxul USA, Inc. and all appurtenances (collectively, the "Project"); and (ii) to pay certain costs of issuance and related costs.

WHEREAS, in order to provide funds for financing the Costs of the Project, as well as costs incidental thereto, the Issuer will issue, sell and deliver its Lease Revenue Bonds, Series 2018 A (West Virginia Infrastructure Fund), in the aggregate principal amount of not to exceed \$16,000,000 (the "Series 2018 A Bonds"), in one or more series, under and pursuant to the Ordinance of the Issuer, as amended and modified (the "Issuer Ordinance"), and the provisions of the Act;

WHEREAS, the Issuer will lease the Project to the City pursuant to an Agreement and Lease dated the date of closing of the Series 2018 A Bonds, by and between the Issuer, as lessor, and the City, as lessee (the "Lease");

WHEREAS, the Issuer will enter into a Lease Assignment dated the Closing Date of the Series 2018 A Bonds, by and between the Issuer and the Purchaser (the "Lease Assignment"), to further secure the payment of the principal of and interest on the Series 2018 A Bonds;

WHEREAS, the City hereby consents to the issuance of the Series 2018 A Bonds and the undertaking of the Project by the Issuer;

WHEREAS, the following documents executed or to be executed in connection with the issuance and sale of the Series 2018 A Bonds and the undertaking of the Project shall be approved by Supplemental Resolution of the City:

- (1) The proposed form of the Lease;
- (2) The proposed form of the Assignment; and
- (3) The proposed form of the Series 2018 A Bonds.

WHEREAS, the City hereby finds and determines that the undertaking of the Project by the Issuer and the leasing of the Project to the City is desirable and needed, will benefit the inhabitants of the City and will promote the general health and welfare of the citizens and residents of the City and that the Project is for a public purpose of the Issuer under the Act; and

WHEREAS, the City desires to take all steps necessary for the prompt completion of the Project and the financing and leasing thereof to permit operation thereof as soon as feasible;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF CHARLES TOWN AS FOLLOWS:

Section 1. All capitalized terms used in this Ordinance and not otherwise defined shall have the same meanings set forth in the Lease.

Section 2. Pursuant to the Lease and the Act, this Ordinance is enacted and the City hereby approves the undertaking of the Project by the Issuer at an estimated cost of not to exceed \$16,000,000 payable from proceeds of the Series 2018 A Bonds and/or funds of the City and agrees to lease the Project from the Issuer.

Section 3. The City hereby also approves the issuance and delivery of the Series 2018 A Bonds by the Issuer in the maximum aggregate principal amount of \$16,000,000, with such terms as are set forth in the Lease and the Issuer Ordinance and hereby further approves enactment of the ordinance of the Issuer and all such other actions of the Issuer as may be deemed necessary or advisable in authorizing the issuance of the Series 2018 A Bonds and the Project.

Section 4. The City hereby approves the sale of the Series 2018 A Bonds to the Purchaser to be selected by the Issuer. The price of the Series 2018 A Bonds shall not exceed \$16,000,000 (100% of par value), there being no interest accrued thereon, and the term shall not exceed 40 years.

Section 5. All covenants, stipulations, obligations and agreements of the City contained herein and contained in the Lease shall be deemed to be the special and limited covenants, stipulations, obligations and agreements of the City to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the City and its successors from time to time and upon any board or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements, shall be transferred by or in accordance with law. Except as otherwise provided herein, all rights, powers and privileges conferred and duties and liabilities imposed upon the City or the officials thereof by the provisions hereof and by the Lease shall be exercised or performed by the City or by such officers, board or body as may be required or permitted by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the Lease shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the City in his or her individual capacity and neither the council members of the City nor any officer or employee thereof shall be liable personally on the Series 2018 A Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 6. The execution, delivery and due performance of the Series 2018 A Bonds, the Lease, and the Lease Assignment are hereby in all respects approved, authorized, ratified and confirmed, including all acts heretofore taken in connection with the Project, the financing thereof and the leasing of the same by the City from the Issuer, and it is hereby ordered that the Mayor, City Clerk and other council members and officers of the City execute and deliver such other documents, certificates, agreements and instruments and take such other action as may be required or desirable to carry out the purposes of this Ordinance, the Series 2018 A Bonds and the aforesaid instruments.

Section 7. All ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed.

Section 8. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the *Spirit of Jefferson and Farmer's Advocate*, a newspaper of general circulation in the City of Charles Town, together with a notice stating that this Ordinance has been adopted, and that any person interested may appear before the City Council upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the City for review by interested persons during office hours of the City. At such hearing, all objections and suggestions shall be heard and the City Council shall take such action as it shall deem proper in the premises.

[Remainder of Page Intentionally Blank]

Section 9. This Ordinance shall take effect immediately following the public hearing and approval of Council hereon.

Passed on First Reading: July 2, 2018

Passed on Second and Final Reading August 6, 2018
Following Public Hearing
Held and Effective on:

CITY OF CHARLES TOWN

Mayor

Attachment: Route 9 Sewer Project (\$16 million) - City Lease Ordinance (3252 : Route 9 Sewer Project - Lease Ordinance)

CERTIFICATION

The undersigned, being the duly appointed, qualified and acting City Clerk of the City of Charles Town (the "City"), does hereby certify that the foregoing is a true, correct and complete copy of an Ordinance duly enacted by the City at a regular meeting, duly held on August 6, 2018, following a public hearing thereon, pursuant to proper notice, at which a quorum was present and acting throughout, and which Ordinance has not been amended, modified, rescinded, repealed, annulled, revoked or otherwise altered as witness my hand and the seal of the City.

Dated: _____, 2018.

CITY OF CHARLES TOWN

[SEAL]

City Clerk

Attachment: Route 9 Sewer Project (\$16 million) - City Lease Ordinance (3252 : Route 9 Sewer Project - Lease Ordinance)

[DRAFT 11.16.2018]

LEASE AND PURCHASE AGREEMENT**Between****CHARLES TOWN BUILDING COMMISSION, Lessor****and****CITY OF CHARLES TOWN, Lessee****Agreed to by****CHARLES TOWN UTILITY BOARD****Dated as of _____, 2019****Effective as of _____, 2019****Table of Contents****ARTICLE I
DEFINITIONS, ETC.**

- Section 1.01. Terms Defined.
- Section 1.02. Exhibits.

**ARTICLE II
REPRESENTATIONS**

- Section 2.01. Representations, Findings, Determinations and Warranties by the Issuer.
- Section 2.02. Representations and Warranties by the City.
- Section 2.03. Representations and Warranties by the CTUB.

**ARTICLE III
CONSRUCTION OF PROJECT AND PAYMENT OF
COSTS OF THE PROJECT**

- Section 3.01. Construction of Project and Payment of Costs of the Project.
- Section 3.02. Disbursements of Proceeds of the Series 2019 A Bonds.
- Section 3.03. Cooperation of Parties and CTUB.

ARTICLE IV

**ISSUANCE AND PAYMENT OF SERIES 2019 A BONDS BY THE ISSUER;
FUNDS AND ACCOUNTS**

- Section 4.01. Sale of Series 2019 A Bonds.
- Section 4.02. Payment of Series 2019 A Bonds.
- Section 4.03. Assignment of Rights Under Lease and Priority of Assignment.
- Section 4.04. Establishment of Funds and Accounts with Depository Bank.
- Section 4.05. Bond Proceeds; Series 2019 A Bonds Construction Fund and Series 2019 A Bonds Costs of Issuance Fund.
- Section 4.06. Covenants of the Issuer, the City and the CTUB as to Lease Rentals and Application thereof.

**ARTICLE V
DEMISING CLAUSES AND LEASE RENTALS**

- Section 5.01. Leasing of the Facilities – Lease Term; Option to Terminate.
- Section 5.02. Lease Rentals.
- Section 5.03. City's and CTUB's Obligations - Limited Obligations.
- Section 5.04. City and CTUB Remedies.
- Section 5.05. Appropriation.
- Section 5.06. Transfer of Facilities upon Earlier of Payment of all Principal of and Interest, if any, on or Maturity Date of, Series 2019 A Bonds.

**ARTICLE VI
COVENANTS RELATING TO THE USE
AND OPERATION OF THE FACILITIES**

- Section 6.01. Taxes and Assessments.
- Section 6.02. Liens.
- Section 6.03. Compliance with Orders, Ordinances, Etc.
- Section 6.04. Permitted Contests.
- Section 6.05. Design, Acquisition, Construction and Equipping of Facilities; Use, Operation and Maintenance of Facilities.
- Section 6.06. Repairs, Maintenance and Alterations.
- Section 6.07. Renewal and Replacement of Equipment.
- Section 6.08. Installation of Furnishings, Fixtures and Equipment by the CTUB.
- Section 6.09. Insurance and Construction Bonds.
- Section 6.10. Authority's Rights to Perform City's Covenants; Advances; Inspection of Premises.
- Section 6.11. CTUB Shall Manage, Operate and Administer Facilities.
- Section 6.12. Permits, Etc.

**ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION**

- Section 7.01. Damage or Destruction.
Section 7.02. Condemnation.

**ARTICLE VIII
ADDITIONAL COVENANTS OF
THE CITY, THE CTUB AND OTHERWISE**

- Section 8.01. Maintenance of Existence.
Section 8.02. [Reserved].
Section 8.03. Books and Records.
Section 8.04. No Representation by Issuer as to Suitability.
Section 8.05. Liens and Encumbrances.
Section 8.06. City Authorization.
Section 8.07. Indemnity.
Section 8.08. Maintenance of Security Interests, Etc.
Section 8.09. Granting of Easements.
Section 8.10. [Reserved].
Section 8.11. Continued Operation of Facilities.

**ARTICLE IX
COVENANTS OF THE ISSUER**

- Section 9.01. Restriction on Sale, Etc.
Section 9.02. Prepayment of Series 2019 A Bonds
Section 9.03. Nature of Issuer's Covenants.

**ARTICLE X
EVENTS OF DEFAULT AND REMEDIES THEREFOR**

- Section 10.01. Events of Default Defined.
Section 10.02. Remedies on Default.
Section 10.03. Right of Re-Entry
Section 10.04. [Reserved].
Section 10.05. Damages in the Event of Termination.
Section 10.06. No Remedy Exclusive.
Section 10.07. No Additional Waiver Implied by One Waiver.
Section 10.08. Remedies to be Performed by the Authority.

ARTICLE XI GENERAL

- Section 11.01. Notices.
- Section 11.02. Assignment of Lease.
- Section 11.03. Binding Effect.
- Section 11.04. Severability.
- Section 11.05. Governing Law.
- Section 11.06. Amendments, Changes and Modifications.
- Section 11.07. Survival.
- Section 11.08. Execution Counterparts.

SIGNATURES

ACKNOWLEDGMENT

EXHIBIT A - PROJECT MAP

EXHIBIT B - REAL ESTATE

EXHIBIT C - PERSONAL PROPERTY

LEASE AND PURCHASE AGREEMENT

This Lease and Purchase Agreement (hereinafter called the "Lease"), dated as of _____, 2019, and effective _____, 2019, by and between the CHARLES TOWN BUILDING COMMISSION, a public corporation and municipal building commission, organized and existing under and by virtue of the provisions of the Constitution and laws of the State of West Virginia, as lessor (hereinafter called the "Issuer" or the "Lessor"), and the CITY OF CHARLES TOWN, a municipal corporation and political subdivision of the State of West Virginia, as lessee (hereinafter called the "City" or the "Lessee"), as agreed to by the CHARLES TOWN UTILITY BOARD, a board of the City created by ordinance of the City pursuant the authority of Chapter 8, Article 20, of the West Virginia Code of 1931, as amended (hereinafter referred to as "CTUB").

W I T N E S S E T H:

WHEREAS, pursuant to the authority of Chapter 8, Article 33, of the West Virginia Code of 1931, as amended (the "Building Commission Act"), the City of Charles Town, Jefferson County, West Virginia created, on December 2, 1968, the Charles Town Building Commission, a public corporation with perpetual existence and a municipal building commission within the meaning of the Act;

WHEREAS, the Issuer under the Act has plenary power and authority to contract and be contracted with, acquire, purchase, own and hold any property, real or personal, and acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities of any type or types for which the City is permitted by law to expend public funds, sell, encumber or dispose of any property, real or personal, and lease its property or any part thereof, for public purposes, to such persons and upon such terms as the Issuer deems proper;

WHEREAS, the City is empowered and authorized by Chapter 8, Article 12 of the West Virginia Code of 1931, as amended, to expend public funds to establish, construct, acquire, maintain and operate public buildings and public works, specifically including, but not limited to, sanitary sewerage collection, transportation and treatment systems;

WHEREAS, pursuant to the authority of Chapter 8, Article 20, of the West Virginia Code of 1931, as amended (the "CTUB Act"), the City created, on March 16, 1998, the Charles Town Utility Board, a board of the City empowered and authorized to supervise and control the acquisition, construction, establishment, extension, equipping, repair, maintenance and operation of the City's combined waterworks and sewerage system, and the construction, maintenance and operation of additions, betterments and improvements thereto, whether acquired, constructed, established, extended or equipped under the provisions of the CTUB Act or not, and to collect the therefrom from the revenues rendered by such combined waterworks and sewerage system;

WHEREAS, pursuant to the authority of the CTUB Act, the CTUB supervises, operates and maintains: (i) a potable water treatment, storage and distribution system which provides potable water service to customers within the service territory of the CTUB (as existing as of the effective date of this Lease, and with any further additions, betterments and improvements thereto, collectively the "CTUB Water System"); and (ii) a sanitary sewerage collection, transportation and treatment system which

provides sanitary sewerage service to customers within the service territory of the CTUB (as existing as of the effective date of this Lease, and with any further additions, betterments and improvements thereto, specifically excluding, however, the Facilities as defined herein, collectively the "CTUB Sewer System," and, collectively with the CTUB Water System, the "CTUB Combined Utility System");

WHEREAS, the Issuer under the Act has plenary power and authority to issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided in the Act;

WHEREAS, the City has requested the assistance of the Issuer, and the Issuer desires to provide assistance, in the financing of the design, acquisition, construction and equipping of a sanitary sewerage collection and transportation system to serve an area along West Virginia State Route 9 located within the sanitary sewer service territory of the CTUB, which sanitary sewerage collection and transportation system will specifically include, but is not limited to, two (2) pump stations, approximately 16,700 linear feet of sanitary sewer force main and approximately 9,240 linear feet of gravity sanitary sewer main, together with all necessary appurtenant facilities (collectively, the "Project"), substantially as set forth on "Exhibit A – Project Map" attached hereto and incorporated herein by reference, on such real property and interests in real property (collectively, the "Real Property") as set forth on "Exhibit B – Real Property" attached hereto and incorporated herein by reference (such Real Property, all personal property and fixtures acquired, constructed and/or installed to complete the Project (collectively, the "Personal Property") as set forth on "Exhibit C – Personal Property" attached hereto and incorporated herein by reference, and all appurtenances thereto and all betterments, additions and improvements thereto, of every kind and nature, now or hereafter acquired, constructed or equipped, herein collectively called the "Facilities");

WHEREAS, in order to provide funds to finance the costs of the Project, as well as costs of issuance thereof, the Issuer has, concurrently with the delivery of this Lease, issued, sold and delivered its Lease Revenue Bonds, Series 2019 A (West Virginia Infrastructure Fund), in the aggregate principal amount of \$ _____ (the "Series 2019 A Bonds");

WHEREAS, in order to provide for the payment of the principal of and interest, if any, on the Series 2019 A Bonds, the Issuer will lease the Facilities to the City and the CTUB will, on behalf of the City, pay Lease Rentals (as defined herein) to the Issuer, all as set forth and described in this Lease;

WHEREAS, the City has, through its City Council, authorized the execution and delivery of this Lease and the issuance by the Issuer of the Series 2019 A Bonds by an ordinance enacted December __, 2018, as supplemented by a supplemental resolution adopted on _____, 2019 (collectively, the "City Ordinance");

WHEREAS, the Issuer has, through its Board, duly authorized the issuance of the Series 2019 A Bonds and the execution and delivery of this Lease by an ordinance enacted December __, 2018, as supplemented by a supplemental resolution adopted on _____, 2019 (collectively, the "Issuer Ordinance" and, collectively with the City Ordinance, sometimes referred to herein as the "Ordinance");

WHEREAS, the CTUB has agreed, on behalf of the City as Lessee, to assume certain responsibilities with respect to design, acquisition, construction and equipping, and operation and maintenance, of the Facilities and the payment of the Lease Rentals to the Authority, on behalf of the Issuer, which agreement is reflected by the signature of the Chairman of the CTUB on this Lease, as duly authorized by official action of the CTUB;

WHEREAS, upon the earlier of the payment in full of the outstanding principal of, and interest, if any, on, the Series 2019 A Bonds or the Maturity Date, as hereinafter defined, the Issuer shall convey, and the City shall, through the CTUB, purchase, the Facilities for the sum of \$10.00; and

WHEREAS, upon the Maturity Date, any outstanding principal of and interest on the Series 2019 A Bonds shall no longer be due and payable and the lien of the holder of the Series 2019 A Bonds on the Lease Rentals and the pledge of security for the Series 2019 A Bonds under this Lease, the Loan Agreement, as hereinafter defined, the Deed of Trust, as hereinafter defined, and the Lease Assignment, as hereinafter defined, shall terminate, and in the event that upon the Maturity Date principal of or interest on the Series 2019 A Bonds remains outstanding, none of the Issuer, City or CTUB shall have any liability for the payment of all or any of such principal or interest, except for such Lease Rentals due and payable by the CTUB, on behalf of the Issuer, for the calendar month immediately preceding the Maturity Date;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration and of the mutual benefits, covenants and agreements herein expressed, the receipt and sufficiency of all of which are hereby acknowledged, the Issuer and the City hereby agree as follows:

ARTICLE I **DEFINITIONS, ETC.**

Section 1.01. Terms Defined. In addition to terms defined elsewhere herein and in the City Ordinance and Issuer Ordinance (including the recitals hereto and the recitals in the Ordinances), which shall have the same meanings when used herein, the following terms shall have the following meanings herein, unless the context requires otherwise:

“Act” means, collectively, the Building Commission Act and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

“Assignment” means the Lease Assignment of even date herewith, by the Issuer to the Authority, and as may be from time to time amended or supplemented.

"Authority" means the West Virginia Water Development Authority, which is the original purchaser and Registered Owner of the Series 2019 A Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the Council under the Act.

“Authorized Representative” or “Authorized Officer” means, with reference to the Issuer, the Chairman or such other officer or officers designated in writing by the Issuer to execute those documents or perform those acts to which are then being referred and, with reference to the City, the Mayor or such other officer or officers designated in writing by the City to execute those documents or perform those acts to which are then being referred and, with reference to the CTUB, the Chairman or such other officer or officers designated in writing by the CTUB to execute those documents or perform those acts to which are then being referred.

“Board” means the governing body of the Issuer as provided by the Building Commission Act.

“Bond” or “Bonds” means the Series 2019 A Bonds to be issued pursuant to the Issuer Ordinance.

“Bond Counsel” means an attorney or firm of attorneys nationally recognized as expert in matters relating to the issuance of governmental debt obligations and initially means Steptoe & Johnson PLLC, of Charleston, West Virginia.

“Bond Legislation” or “Bond Ordinance” means the Issuer Ordinance and all ordinances, orders and resolutions supplemental thereto or amendatory hereof.

“Chairman” means the Chairman of the Issuer.

“City” or “Lessee” means the City of Charles Town, West Virginia, a municipal corporation and political subdivision of the State of West Virginia, located in Jefferson County, West Virginia, and where appropriate, includes the Council thereof.

“City Clerk” means the City Clerk of the City.

“City Ordinance” means, collectively, the ordinance duly enacted by the City Council of the Issuer on December __, 2018, as supplemented by a supplemental resolution adopted on _____, 2019, authorizing the execution and delivery of this Lease and the issuance of the Series 2019 A Bonds by the Issuer.

“Closing Date” means the date upon which there is an exchange of the Series 2019 A Bonds for a portion of the proceeds representing more than de minimus amount of the original purchase price thereof.

“Costs” or “Costs of the Project” means those costs described in Section 1.02D of the Issuer Ordinance to be a part of the cost of design, acquisition, construction and equipping of the Project, and shall also include pre-construction costs advanced by the City of Ranson for the design, acquisition, construction and equipping of the Project, and any interest expense incurred by the City of Ranson related to any such advanced pre-construction costs, as supported by such documentation required by the Authority.

“Deed of Trust” means the Credit Line Deed of Trust, Fixture Filing and Security Agreement dated as of _____, 2019, and effective _____, 2019, by and between the Issuer and the trustee named therein, for the benefit of the Authority, as from time to time amended or supplemented.

“Depository Bank” means _____, _____, West Virginia, a bank or trust company which is a member of FDIC (herein defined), and its successors or assigns.

“Event of Default” means any of the events described as an Event of Default in Section 10.01 hereof.

“Facilities” shall have the meaning set forth in the preambles hereof, and specifically includes the Project and all improvements, buildings, fixtures, equipment and other personal property, together with all additions, improvements and additional facilities thereto, of every kind and nature, now or hereafter acquired, constructed or installed and connecting directly or indirectly to the Project, which are leased by the Issuer to the City pursuant to this Lease and are subject to the lien of the Deed of Trust, subject to Permitted Encumbrances.

“Facilities Customers” means those residential, business and industrial customers which receive sanitary sewerage service as a customer of the CTUB from a direct or indirect connection to the Facilities and which become a customer of CTUB after the Substantial Completion of the Project and until the Maturity Date or Pre-Payment of the Series 2019 A Bonds; provided, that the calculation of the number of Facilities Customers does not include: (i) Prior Customers of CTUB which connect directly or indirectly to the Facilities; or (ii) any customer of CTUB which begins receiving sanitary sewer service as a customer of the CTUB after the Substantial Completion of the Project and occupies a structure which was occupied by a Prior Customer of CTUB which is connected directly or indirectly to the Facilities.

“Facilities Debt Service” means, for any period of calculation, the aggregate amount of (i) the proportionate share attributable to Facilities Customers (based upon the ratio of the Facilities Customers divided by the sum of the Facilities Customers and the Prior CTUB Customers) of the principal of, and interest on, any debt obligations of the Issuer, other than the Series 2019 A Bonds, the proceeds of which are used, in whole or in part, to pay all or a portion of the costs of design, acquisition, construction and equipping of additions, betterments and improvements to the Facilities; and (ii) the proportionate share attributable to the Facilities (based upon Facilities Customers as a ratio of the aggregate customers of the CTUB Sewer System and the Facilities Customers) of the principal of, and interest on, any debt obligations of the City issued after the effective date of this Lease, the proceeds of which are used, in whole or in part, to pay all or a portion of the costs of design, acquisition, construction and equipping of Wastewater Treatment Facilities, as defined herein.

“Facilities Net Revenues” means the amount of Gross Revenues of the Facilities received by the CTUB in any calendar month remaining after deducting (i) Facilities Debt Service for the same calendar month; and (ii) an amount equal to the Percentage of Operation and Maintenance Expense calculated for the Fiscal Year ending in the most recent Calendar Year as provided in Section 4.06 herein, multiplied by the Gross Revenues of the Facilities received by the CTUB in the same calendar month.

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

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

"Gross Revenues of the Facilities" means, so long as the Series 2019 A Bonds are outstanding, all rates and charges for services of the Facilities, net of applicable customer discounts and a reasonable provision for uncollectable accounts, but including customer forfeited discounts, received by the CTUB from the Facilities Customers, whether charged pursuant to the tariff of the City in effect on the effective date of this Lease or thereafter duly enacted by City Council; provided however, the "Gross Revenues of the Facilities" specifically excludes any capacity impact fees, capacity assurance fees, service termination fees, service re-connection fees, surcharges, tap fees, penalties and convenience charges whether charged pursuant to the tariff of the City in effect on the effective date of this Lease or thereafter duly enacted by City Council; provided further, that "Gross Revenues of the Facilities" specifically excludes any monies deposited with the CTUB by a developer, and any rates for services of the Facilities from customers which are obligated to developer reimbursement, pursuant to any Mainline Extension Agreement entered into by the CTUB pursuant to W. Va. Code R. 150-5-5.5 or any successor thereto or any Alternate Mainline Extension Agreement entered into by the CTUB and approved by the PSC, provided such developer reimbursement shall occur only for the time period required for a Mainline Extension Agreement by W. Va. Code R. 150-5-5.5 or provided for in an Alternate Mainline Extension Agreement approved by the PSC.

"Gross Revenues of the CTUB Sewer System" means, so long as the Series 2019 A Bonds are outstanding, all rates and charges for services of the CTUB Sewer System and the Facilities, from all customers of the CTUB Sewer System and the Facilities Customers, net of applicable customer discounts and a reasonable provision for uncollectible accounts, but including customer forfeited discounts, received by the CTUB, whether charged pursuant to the tariff of the City in effect on the effective date of this Lease or thereafter duly enacted by City Council; provided however, the "Gross Revenues of the CTUB Sewer System" specifically excludes any capacity impact fees, capacity assurance fees, service termination fees, service re-connection fees, surcharges, tap fees, penalties and convenience charges whether charged pursuant to the tariff of the City in effect on the effective date of this Lease or thereafter duly enacted by City Council; provided further, that "Gross Revenues of the CTUB Sewer System" specifically excludes any monies deposited with the CTUB by a developer, and any rates for services of the CTUB Sewer System or the Facilities from customers which are obligated to developer reimbursement, pursuant to, any Mainline Extension Agreement entered into by the CTUB pursuant to W. Va. Code R. 150-5-5.5 or any successor thereto or any Alternate Mainline Extension Agreement entered into by the CTUB and approved by the PSC, to serve customers of the CTUB Sewer System and Facilities Customers, provided such developer reimbursement shall occur only for the time period required for a Mainline Extension Agreement by W. Va. Code R. 150-5-5.5 or provided for in an Alternate Mainline Extension Agreement approved by the PSC.

"Independent Certified Public Accountant" means any certified public accountant or firm of certified public accountants, which is not an employee of the Issuer, the City or the CTUB, that shall at any time hereafter be retained by the Issuer, the City or the CTUB to prepare an independent audit or

special audit of either such entity or for any other purpose except keeping the accounts of the CTUB Sewer System in the normal operation of its business and affairs.

"Issuer" or "Lessor" means the Charles Town Building Commission, a public corporation and municipal building commission, organized and existing under and by virtue of the provisions of the Constitution and laws of the State, created by the City pursuant to the Building Commission Act, and any successor in function.

"Issuer Ordinance" means, collectively, the ordinance duly enacted by the Board of the Issuer on December __, 2018, as supplemented by a supplemental resolution adopted on _____, 2019, authorizing the issuance of the Series 2019 A Bonds and the execution and delivery of this Lease.

"Lease" means this Lease and Purchase Agreement, all amendments thereof and supplements thereto and, where applicable, also means any subsequent lease or leases of all or any portion of the Facilities.

"Lease Rentals" means, the Facilities Net Revenues paid by the CTUB to the Authority on behalf of the Issuer so long as the Series 2019 A Bonds are outstanding as consideration for the leasing by the City of the Facilities, or any part thereof, and all rights to receive the same.

"Lease Term" shall have the meaning assigned to such term under Section 5.01 hereof.

"Loan Agreement" means the Loan Agreement heretofore entered, or to be entered into, by and between the Issuer and the Authority, on behalf of the Council, providing for the purchase of the Series 2019 A Bonds from the Issuer by the Authority, the form of which shall be approved and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Mayor" means the mayor of the City.

"Maturity Date" means the date upon which the Series 2019 A Bonds mature, being _____ 1, 2049, after which neither the City nor the CTUB shall be required to pay the Lease Rentals to the Issuer and the Issuer shall be relieved of all responsibility for payment of any outstanding principal of or interest, if any, on the Series 2019 A Bonds.

"Net Proceeds" means the face amount of the Series 2019 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any.

"Operation and Maintenance Expenses" means, with respect to the CTUB Sewer System and the Facilities, the costs and expenses incurred by the CTUB for normal operation and maintenance of the CTUB Sewer System and the Facilities, including, without limitation, (i) the costs and expenses within the functional expense categories, as defined by the Uniform System of Accounts for Wastewater Utilities as of the effective date of this Lease, of: Collection, Pumping, Treatment, Customer Accounts, General and Administrative (inclusive of engineering, legal and professional costs) and Taxes Other Than Income Taxes, (ii) the depreciation on all CTUB internally financed capital replacements, additions,

betterments and improvements calculated in accordance with generally accepted accounting principles, and (iii) all other costs and expenses incurred in the provision of sanitary sewer service to customers of the CTUB Sewer System and the Facilities Customers. Operation and Maintenance shall specifically exclude, however, required reimbursements to developers pursuant to any Mainline Extension Agreement entered into by the CTUB pursuant to W. Va. Code R. 150-5-5.5 or any successor thereto or any Alternate Mainline Extension Agreement entered into by the CTUB and approved by the PSC.

“Percentage of Operation and Maintenance Expense” means, as adjusted by CTUB on the first day of each January during the Lease Term for the immediately prior Fiscal Year, the aggregate annual Operation and Maintenance Expenses divided by the aggregate annual Gross Revenues of the CTUB Sewer System, as certified by an Independent Certified Public Accountant.

“Permitted Encumbrances,” means this Lease, the Deed of Trust, the Assignment and, as of any particular time (i) Liens for taxes and special assessments which are not then delinquent or, if then delinquent, are being contested by the Issuer in good faith; (ii) utility, access and other easements and rights-of-way, restrictions and exceptions that the Issuer certifies will not interfere with or impair the operation of the Facilities; (iii) any subordinate, junior and inferior mechanics’, laborers’ or materialmen’s lien if payment is not yet due; provided, however, such a lien may not be of record for in excess of 30 days unless contested in good faith by the Issuer; (iv) such minor defects and irregularities of title as normally exist with respect to properties similar in character to the Facilities and which do not materially adversely affect the value of the Facilities or impair the property affected thereby for the purpose for which it was acquired or is held or used by the Issuer; (v) zoning laws and similar restrictions; (vi) such subsequent leases of the Facilities or portions thereof in accordance with the terms of this Lease and which shall be subject to the lien and pledge of the Deed of Trust, this Lease and the Assignment; and (vii) liens, security interests and other encumbrances which are expressly subject and subordinate to the Deed of Trust, this Lease and the Assignment.

“Prior CTUB Sewer Customers” means customers of the CTUB Sewer System which will be connected directly or indirectly to the Facilities, and are customers of the CTUB Sewer System on the date of Substantial Completion of the Project.

“Plans and Specifications” means the plans and specifications for the Project.

“Project” shall have the meaning set forth in the preambles hereof and as described in Section 1.02B of the Issuer Ordinance.

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

“Purchaser” means the West Virginia Water Development Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council, and any successor thereof.

“Qualified Investments” means and includes any investment permitted to be made by a municipality or public corporation of the State pursuant to State Law, specifically including but not limited to Chapter 8, Article 13, Section 22 of the Code of West Virginia and the West Virginia

“consolidated fund” managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the Code of West Virginia.

“Registrar” means the Bond Registrar.

“Registered Owner,” “Bondholder,” “Holder” or any similar term means whenever used herein with respect to the Series 2019 A Bonds, the person in whose name the Series 2019 A Bonds are registered.

“Registrar” means the Bond Registrar as designated in the Supplemental Resolution.

“Secretary” means the Secretary of the Issuer.

“Series 2019 A Bonds” mean the Issuer’s Lease Revenue Bonds, Series 2019 A (West Virginia Infrastructure Fund), dated _____, 2019, issued in the original aggregate principal amount of \$ _____.

“Series 2019 A Bonds Construction Fund” means the Series 2019 A Bonds Construction Fund established pursuant to the Issuer Ordinance.

“Series 2019 A Costs of Issuance Fund” means the Series 2019 A Bonds Costs of Issuance Fund established pursuant to the Issuer Ordinance.

“State” means the State of West Virginia.

“Substantial Completion” means the date upon which the CTUB receives a certificate of substantial completion of the acquisition, construction and equipping of the Project from the Consulting Engineer.

“Supplemental Resolution” means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded with the article “the”, refers specifically to the supplemental resolution authorizing the sale of the Series 2019 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2019 A Bonds, and not so included may be included in another supplemental resolution.

“Tap Fees” means the fees, if any, paid by the prospective customers of the CTUB Sewer System or the Facilities in order to connect thereto.

“Wastewater Treatment Facilities” means, collectively, the real and personal property of the CTUB Sewer System operated for the purpose of, and utilized for, the treatment of sanitary sewerage, specifically including, but not limited to: (i) such facilities for the treatment of sanitary sewerage in existence as of the effective date of this Lease which serve the CTUB Sewer System and/or the Facilities, and all subsequent replacements, improvements, additions and betterments thereto during the Lease Term, and (ii) any such new facilities for the treatment of sanitary sewerage designed, acquired, constructed and/or equipped to serve the CTUB Sewer System and/or the Facilities during the Lease Term, and all

subsequent replacements, improvements, additions and betterments thereto during the Lease Term.

"West Virginia Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Chapter 31, Article 15A, Section 9 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

All references in this instrument to designated "Articles," "Sections" and other subdivisions are to be designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision unless the context indicates otherwise.

Any requirement for execution of this Lease, the Series 2019 A Bonds or any Certificate or other document by a Mayor, Chairman, President, Secretary, City Clerk or other officer shall mean that this Lease, such Series 2019 A Bonds, Certificate or other document may be executed by the Vice Mayor, Vice Chairman, Vice President, Assistant Secretary, Assistant City Clerk or Assistant to such other officer.

The terms defined in this Lease have the meanings assigned to them in this Lease, words importing the singular shall include the plural as well as the singular and vice versa, words importing persons shall include firms, associations and corporations, and words importing the masculine, feminine and neuter gender shall be deemed to include all such genders.

All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles.

Section 1.02. Exhibits. The following Exhibits are attached to and by reference are hereby made a part of this Lease:

EXHIBIT A - PROJECT MAP

EXHIBIT B - REAL PROPERTY

EXHIBIT C - PERSONAL PROPERTY

ARTICLE II **REPRESENTATIONS**

Section 2.01. Representations, Findings, Determinations and Warranties by the Issuer. The Issuer makes the following representations, findings, determinations, and warranties as the basis for the undertakings and covenants on its part and on the part of the Lessee contained herein, all such representations and warranties to be maintained until termination of this Lease:

(A) The Issuer is a public corporation and municipal building commission validly created and existing under the Act and the other laws of the State, is authorized to enter into the transactions contemplated by the Deed of Trust, this Lease, the Loan Agreement, the Issuer Ordinance, the Assignment and all other documents, agreements, instruments and certificates in connection herewith and therewith and to carry out its obligations hereunder and thereunder, has been duly authorized to execute and deliver the Deed of Trust, the Loan Agreement, this Lease, the Assignment and all other documents, agreements, instruments and certificates in connection herewith and therewith, and agrees that it will do or cause to be done all things necessary to preserve and keep in full force and effect its existence.

(B) The undertaking of the Project, the payment of Costs of the Project, the issuance and sale of the Series 2019 A Bonds, the execution and delivery of the Deed of Trust, this Lease, the Loan Agreement, the Assignment and all other agreements, documents, instruments and certificates in connection herewith and therewith and the performance of all covenants and agreements of the Issuer contained in the Deed of Trust, this Lease, the Loan Agreement, the Issuer Ordinance, the Assignment and all other documents, agreements, instruments and certificates in connection herewith and therewith and of all other acts and things required under the Constitution and laws of the State, or any other document, agreement or instrument by which the Issuer is bound, to make the Deed of Trust, this Lease, the Loan Agreement, the Issuer Ordinance, the Assignment and all other documents, agreements and certificates in connection herewith and therewith valid and binding obligations of the Issuer in accordance with the terms thereof, are authorized by the Act and have been duly authorized by proceedings of the Issuer enacted or adopted at meetings thereof duly called and held.

(C) The Issuer has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer any act or thing whereby its title to and interest in the Facilities shall or may be impaired, charged or encumbered in any manner whatsoever except by Permitted Encumbrances.

(D) The Issuer has authorized the City, through the CTUB, subject to the terms and conditions set forth in this Lease, which terms and conditions the Issuer determines to be necessary, desirable and proper, to undertake, supervise and complete the design, acquisition, construction and equipping of the Project by such means as shall be available to the CTUB and in the manner determined by the CTUB. The Issuer has authorize the City, through the CTUB, to enter into the construction contracts for the Project and serve as agent of the Issuer for purposes of requisition proceeds of the Series 2019 A Bonds to pay Costs of the Project.

(E) To finance the Costs of the Project, the Issuer has authorized issuance of the Series 2019 A Bonds in the aggregate principal amount of \$_____, to be issued upon the terms set forth in the Issuer Ordinance and in the form of Series 2019 A Bonds, and in order to secure the payment of the principal of and interest, if any, on the Series 2019 A Bonds, the interest of the Issuer in this Lease and the Lease Rentals are pledged and assigned to Authority, pursuant to the Loan Agreement and the Assignment.

(F) The Issuer has found and determined, and does hereby find and determine, that
(i) the undertaking of the design, acquisition, construction and equipping of the Project as provided for

herein and in the Issuer Ordinance, (ii) the financing of the Costs of the Project through the issuance, sale and delivery by it of the Series 2019 A Bonds, (iii) the leasing by it of the Facilities to the City under and pursuant hereto, and (iv) all other things contemplated by or contained in the Issuer Ordinance, the Deed of Trust, this Lease, the Loan Agreement and the Assignment are necessary, proper and appropriate to accomplish the public purpose of providing sanitary sewerage collection, transportation and treatment service within the CTUB service area.

Section 2.02. Representations and Warranties by the City. The City makes the following representations and warranties, all such representations and warranties to be applicable upon and following issuance of the Series 2019 A Bonds and to be maintained until termination of this Lease:

(A) The City is a municipal corporation and political subdivision of the State, duly and validly created and existing under the Constitution and the other laws of the State, has been duly authorized to execute and deliver this Lease and all other agreements, documents, instruments and certificates in connection herewith and therewith, and agrees that it will do or cause to be done all things necessary to preserve and keep in full force and effect its existence.

(B) The Project, the execution and delivery of this Lease and all other agreements, documents, instruments and certificates in connection herewith, and the performance of all covenants and agreements of the City contained in this Lease and all other agreements, documents, instruments and certificates in connection herewith, and of all other acts and things required under the Constitution and laws of the State, or any other document, agreement or instrument by which the City is bound, to undertake design, acquisition, construction and equipping of the Project and to make this Lease and all agreements, documents and instruments in connection herewith, valid and binding obligations of the City in accordance with the terms thereof, are duly authorized under the Constitution and other laws of the State and have been duly authorized by proceedings of the City adopted at meetings thereof duly called and held. No authority or proceedings for the execution and delivery of this Lease and the performance of the obligations hereunder has or have been repealed, revoked or rescinded.

(C) The undertaking design, acquisition, construction and equipping of the Project by the CTUB and the financing thereof by the Issuer, as provided under this Lease, the City Ordinance, the Issuer Ordinance, the Loan Agreement and the Assignment, is a public purpose under the Act.

(D) There is no action, suit, proceeding, inquiry, order, claim, counterclaim, arbitration, demand or investigation at law or in equity or before or by any court, public board, authority or body, pending or threatened, or any order, judgment or decree in progress, nor is there any basis therefor, which would adversely affect the City, the Facilities or the transactions contemplated by the Deed of Trust, this Lease, the Loan Agreement, the Assignment or any of the documents, agreements, instruments or certificates in connection therewith or the consummation of the transactions contemplated thereby, the payment of Lease Rentals hereunder from the Facilities Net Revenues or which in any way would adversely affect the validity or enforceability of the Deed of Trust, this Lease, the Loan Agreement, the City Ordinance, the Assignment, or the Series 2019 A Bonds or the payment of Lease Rentals hereunder from the Facilities Net Revenues, or which in any way would adversely affect the ability of the City to perform its obligations under this Lease or any agreement, document or instrument in connection herewith and therewith, the creation, organization or existence of the City, the title to office

of any officer thereof or the power of the City to lease, or the CTUB to use and operate, the Facilities.

(E) The City shall, through the CTUB, use, operate and maintain the Facilities as a sanitary sewerage collection and transportation system until the date on which the Series 2019 A Bonds have been fully paid and are no longer outstanding. So long as the Series 2019 A Bonds are outstanding, the City hereby agrees and affirms that the rates, charges and fees for sanitary service supplied to Facilities Customers shall not be decreased below the rates and charges in effect for customers of the CTUB Sewer System as of the effective date of this Lease located within the corporate boundaries of the City.

(F) All of the proceeds of the Series 2019 A Bonds will be used to pay Costs of the Project, whether incurred prior to or after the date of issuance of the Series 2019 A Bonds, and to pay costs of issuance of the Series 2019 A Bonds.

(G) The execution and delivery of this Lease and all documents, agreements, instruments and certificates in connection herewith, the consummation of the transactions contemplated hereby and thereby, and the compliance with, fulfillment of and carrying out of the provisions and terms hereof and thereof, including, without limitation, the use and operation of the Facilities, do not and will not, with or without the giving of notice or passage of time, or both, conflict with or constitute on the part of the City a violation or breach of or constitute or result in a default or loss of rights (or give rise to any right of termination, cancellation or acceleration) under or result in the creation of any lien, charge or encumbrance pursuant to and are not materially adversely affected by any mortgage, indenture, note, agreement, bond, contract, lease, document, resolution, deed of trust or other agreement, obligation or instrument to which the City is a party or by which the City or its properties are bound or affected or any charter provision, judgment, statute, ordinance, order, rule, law, court decision, decree or regulation by which the City or its properties are subject or affected, and will not cause any forfeiture or impairment of any license, authorization or permit.

(H) The City has complied in all material respects with the applicable provisions of law with respect to the Project or which would affect its ability to enter into this Lease and the Assignment, and consummate the transactions set forth herein and therein and has full legal right, power and authority to enter into, execute and deliver this Lease and all other documents, agreements, instruments and certificates in connection herewith and perform its obligations hereunder and thereunder, to lease, and the CTUB operate and use the Facilities, to conduct its business as contemplated in this Lease, and to carry out and consummate all transactions contemplated by the foregoing, including, without limitation, the payment of Lease Rentals hereunder from the Facilities Net Revenues.

(I) The City hereby affirms that all Lease Rentals shall be used to pay principal of, and interest on, the Series 2019 A Bonds until the earlier of (i) the payment in full of the outstanding principal of and interest, if any, on the Series 2019 A Bonds; or (ii) the Maturity Date of the Series 2019 A Bonds. The City shall have no obligation to repay any outstanding principal of, or interest, if any, on the Series 2019 A Bonds outstanding as of the Maturity Date, except from any Lease Rentals due and payable by the CTUB to the Authority for the calendar month immediately preceding the Maturity Date.

Section 2.03. Representations and Warranties by the CTUB. The CTUB makes the

following representations and warranties, all such representations and warranties to be applicable upon and following issuance of the Series 2019 A Bonds and to be maintained until termination of this Lease:

(A) The CTUB is a board of the City of Charles Town, duly and validly created and existing pursuant to the CTUB Act and has duly authorized its agreement to the terms and conditions of this Lease and all other agreements, documents, instruments and certificates in connection herewith and therewith.

(B) The Project, the agreement to the terms of this Lease and all other agreements, documents, instruments and certificates in connection herewith, and the performance of all covenants and agreements of the CTUB contained in this Lease and all other agreements, documents, instruments and certificates in connection herewith, and of all other acts and things required under the Constitution and laws of the State, or any other document, agreement or instrument by which the CTUB is bound, to undertake the design, acquisition, construction and equipping of the Project and to make this Lease and all agreements, documents and instruments in connection herewith, valid and binding obligations of the CTUB in accordance with the terms thereof, are duly authorized under the Constitution and other laws of the State and have been duly authorized by proceedings of the CTUB adopted at meetings thereof duly called and held. No authority or proceedings for the agreement to the terms of this Lease and the performance of the obligations hereunder has or have been repealed, revoked or rescinded.

(C) There is no action, suit, proceeding, inquiry, order, claim, counterclaim, arbitration, demand or investigation at law or in equity or before or by any court, public board, authority or body, pending or threatened, or any order, judgment or decree in progress, nor is there any basis therefor, which would adversely affect the CTUB, the Facilities or the transactions contemplated by the Deed of Trust, this Lease or any of the documents, agreements, instruments or certificates in connection therewith or the consummation of the transactions contemplated thereby, the payment of Lease Rentals hereunder by CTUB on behalf of the City from Facilities Net Revenues, or which in any way would adversely affect the validity or enforceability of the Deed of Trust, this Lease, the Loan Agreement, the City Ordinance, the Assignment, or the Series 2019 A Bonds or the payment of Lease Rentals hereunder from Facilities Net Revenues by the CTUB on behalf of the City, or which in any way would adversely affect the ability of the CTUB to perform its obligations under this Lease or any agreement, document or instrument in connection herewith and therewith, the creation, organization or existence of the CTUB, the title to office of any officer thereof or the power of the CTUB to use, operate and maintain the Facilities.

(D) The CTUB is a public utility created by the City pursuant to the provisions of West Virginia Code Section 8-20-1 *et seq.* to provide potable water service and sanitary sewerage service both within, and outside of, the corporate boundaries of the City, and certificated by the Public Service Commission of West Virginia (the "PSC"). CTUB will use and operate the Facilities to provide sanitary sewerage service in the area of the Facilities pursuant to and in accordance with the rules and regulations of the PSC until the earlier of (i) payment in full of the principal of and interest, if any, on the Series 2019 A Bonds; or (ii) the Maturity Date.

(E) All of the proceeds of the Series 2019 A Bonds will be used to pay Costs of the Project and to pay costs of issuance of the Series 2019 A Bonds.

(F) The agreement to the terms and provisions of this Lease and all documents, agreements, instruments and certificates in connection herewith, the consummation of the transactions contemplated hereby and thereby, and the compliance with, fulfillment of and carrying out of the provisions and terms hereof and thereof, including, without limitation, the use and operation of the Facilities, do not and will not, with or without the giving of notice or passage of time, or both, conflict with or constitute on the part of the CTUB a violation or breach of or constitute or result in a default or loss of rights (or give rise to any right of termination, cancellation or acceleration) under or result in the creation of any lien, charge or encumbrance pursuant to and are not materially adversely affected by any mortgage, indenture, note, agreement, bond, contract, lease, document, resolution, deed of trust or other agreement, obligation or instrument to which the CTUB is a party or by which the CTUB or its properties are bound or affected or any charter provision, judgment, statute, ordinance, order, rule, law, court decision, decree or regulation by which the CTUB or its properties are subject or affected, and will not cause any forfeiture or impairment of any license, authorization or permit.

(G) The CTUB has complied in all material respects with the applicable provisions of law with respect to the Project or which would affect its ability to agree to the terms and provisions of this Lease, and consummate the transactions set forth herein and therein and has full legal right, power and authority to agree to the terms and provisions of this Lease and all other documents, agreements, instruments and certificates in connection herewith and perform its obligations hereunder and thereunder, to operate and use the Facilities, to conduct its business as contemplated in this Lease, and to carry out and consummate all transactions contemplated by the foregoing, including, without limitation, the payment of Lease Rentals hereunder on behalf of the City from Facilities Net Revenues.

(H) The CTUB hereby affirms that, so long as this Lease is effect, all Lease Rentals shall be used to pay the principal of, and interest on, the Series 2019 A Bonds until the earlier of (i) the payment in full of the outstanding principal of and interest, if any, on the Series 2019 A Bonds; or (ii) the Maturity Date of the Series 2019 A Bonds. The CTUB shall have no obligation to repay any outstanding principal of, or interest, if any, on the Series 2019 A Bonds outstanding as of the Maturity Date, except from such Lease Rentals for the calendar month immediately preceding the Maturity Date due and payable by the CTUB on behalf of the City.

ARTICLE III

CONSTRUCTION OF PROJECT AND PAYMENT OF COSTS OF THE PROJECT

Section 3.01. Construction of Project and Payment of Costs of the Project. The Issuer has assigned responsibility to the City for, and the City agrees to undertake, through the CTUB, the design, acquisition, construction and equipping of the Project, and that such will be done with reasonable dispatch with the proceeds of the Series 2019 A Bonds. The Issuer hereby covenants and agrees to pay for the Costs of the Project in accordance with the provisions hereof, to the extent, but only to the extent of moneys available therefor from the proceeds of the Series 2019 A Bonds. The Issuer and the CTUB, on behalf of the City, hereby agree that payment of Costs of the Project shall be made in the manner and subject to the conditions specified in the Issuer Ordinance and Section 3.02 hereof, without further authorization of the Issuer.

The Issuer agrees that it will enter into, or accept the assignment of, such further contracts, agreements or documents as the City and/or CTUB may request in order to effectuate the purposes of this Section 3.01, and that it will not execute any other contract, agreements or documents, or give any order for such acquisition unless and until the City and the CTUB shall have approved the same in writing. Nothing contained in this Lease shall relieve the City from its obligation to pay, through the CTUB, Lease Rentals pursuant to Article V hereof.

Section 3.02. Disbursements of Proceeds of the Series 2019 A Bonds. The Issuer hereby assigns to the CTUB the authority to request disbursements of proceeds of the Series 2019 A Bonds from the Authority pursuant to such requirements of the Authority.

Section 3.03. Cooperation of Parties and CTUB. The Issuer, the City and the CTUB shall cooperate to the fullest extent practicable with a view to the completion of acquisition, construction and equipping of the Project with all reasonable promptness, but no delay in the undertaking or completion of the Project, however caused, shall alter, affect, diminish or impair the obligations of the City to pay, through the CTUB, Lease Rentals as provided herein or any other obligations of the City and CTUB under this Lease.

ARTICLE IV ISSUANCE AND PAYMENT OF SERIES 2019 A BONDS BY THE ISSUER; FUNDS AND ACCOUNTS

Section 4.01. Sale of Series 2019 A Bonds. The Issuer shall issue, sell and deliver the Series 2019 A Bonds in an aggregate principal amount of \$ _____ pursuant to and in conformity with the Issuer Ordinance. The proceeds of the Series 2019 A Bonds shall be advanced from time to time as requisitioned by the CTUB, on behalf of the Issuer, and approved by the Authority, and applied as provided in the Issuer Ordinance and herein.

Section 4.02. Payment of Series 2019 A Bonds. The principal of and interest, if any, on the Series 2019 A Bonds shall be payable to the Authority on the first day of each month, commencing six (6) months after the date of Substantial Completion of the Project, as calculated in Section 4.06 hereof and in accordance with the provisions of the Issuer Ordinance, the Loan Agreement, the Assignment and the Series 2019 A Bonds, and the Lease Rentals paid by the CTUB on behalf of the City hereunder shall be pledged to, and a security interest therein granted and/or assigned to secure the payment of, the Series 2019 A Bonds, all as provided herein, in the Loan Agreement, the Assignment and in the Issuer Ordinance.

Section 4.03. Assignment of Rights Under Lease and Priority of Assignment. This Lease and the rights, interests, powers, privileges and benefits accruing to or vested in the Issuer hereunder shall be protected and enforced in conformity with the Assignment and are hereby and by the Assignment assigned by the Issuer to the Authority as security for the Series 2019 A Bonds and shall be exercised and enforced for or on behalf of the Authority in conformity with the provisions hereof and of the Assignment. Notwithstanding anything herein or in the Assignment to the contrary, this Lease is and the Lease Rentals shall be expressly subject to the Assignment. THE ISSUER SHALL RETAIN NO RIGHTS HEREUNDER, EXCEPT THOSE RIGHTS SET FORTH IN SECTION 8.07, AND

NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, ONLY THE AUTHORITY OR SUBSEQUENT OWNER OF THE SERIES 2019 A BONDS SHALL HAVE THE RIGHT TO PURSUE ANY REMEDIES HEREUNDER.

Section 4.04. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts were created and established pursuant to the Issuer Ordinance with, and shall be held by, the Depository Bank separate, distinct and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Series 2019 A Bonds Construction Fund; and
- (2) Series 2019 A Bonds Cost of Issuance Fund.

Section 4.05. Bond Proceeds; Series 2019 A Bonds Construction Fund and Series 2019 A Bonds Costs of Issuance Fund. The proceeds of the sale of the Series 2019 A Bonds, except for such proceeds to be used to pay costs of issuance thereof, advanced by the Authority from time to time as requisitioned by the CTUB, shall be deposited upon receipt in the Series 2019 A Bonds Construction Fund. The moneys in the Series 2019 A Bonds Construction Fund in excess of the amount insured by FDIC shall be secured at all times by the Depository Bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Moneys in the Series 2019 A Bonds Construction Fund shall be expended by the CTUB on behalf of the Issuer solely to pay such invoices which were approved by the Authority for such disbursement. The proceeds of the Series 2019 A Bonds used to pay costs of issuance thereof, advanced by the Authority pursuant to requisition of the CTUB, shall be deposited upon receipt in the Series 2019 A Bonds Costs of Issuance Fund and used to pay such invoices as approved by the Authority.

All the funds provided for in this Article IV, other than the Cost of Issuance Fund, shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Authority shall have a lien thereon for further securing payment of the Series 2019 A Bonds and the interest, if any, thereon, but the Depository Bank shall not be a trustee as to such funds.

Section 4.06. Covenants of the Issuer, the City and the CTUB as to Lease Rentals and Application thereof. So long as the Series 2019 A Bonds shall be outstanding and unpaid and this Lease remains in effect, the Issuer, the City and the CTUB further covenant with the Authority as the holder of the Series 2019 A Bonds as follows:

A. So long as the Series 2019 A Bonds are outstanding, the CTUB shall, by no later than the 20th day of each calendar month (or the next business day), calculate the Facilities Net Revenues for the prior calendar month based on the Gross Revenues of the Facilities received by the CTUB in the prior calendar month, the Facilities Debt Service in the prior month and the Percentage of Operation and Maintenance Expenses calculated for the then current Calendar Year and pay such Facilities Net Revenues directly to the Authority as Lease Rentals by no later than the 1st day of the following calendar month.

B. The CTUB shall, on the first day of December immediately following the last day of each Fiscal Year, calculate the Percentage of Operations and Maintenance Expense to be used to calculate Facilities Net Revenues for the twelve (12) calendar months in the immediately following Calendar Year, based on the immediately preceding Fiscal Year as certified by an Independent Certified Public Accountant. The Percentage of Operations and Maintenance Expense calculated on each December 1st shall be used to calculate Net Facilities Revenues commencing on January 1st of the immediately following Calendar Year.

The Issuer, the City and the CTUB specifically acknowledge and affirm that (i) the amount of Lease Rentals paid to the Authority each month will vary based on factors outside of the control of the Parties, specifically including, but not limited to, variations each month in the amount of Gross Revenues of the Facilities collected by CTUB and annual changes in Operation and Maintenance Expenses of CTUB; (ii) the aggregate Lease Rentals which may be paid to the Authority over the Lease Term may not be sufficient to pay in full the outstanding principal of, and interest, if any, on, the Series 2019 A Bonds as of the Maturity Date; and (iii) the Authority, as Purchaser of the Series 2019 A Bonds, is aware of the issues risks in (i) and (ii) above and has agreed that, upon the Maturity Date, if the entire outstanding principal of and interest, if any, on the Series 2019 A Bonds has not been paid, the remaining principal of and interest, if any, on the Series 2019 A Bonds will be converted to a grant, the lien on the Lease Rentals and the Facilities shall be released and the CTUB shall purchase the Facilities from the Issuer for the sum of \$10.00.

Notwithstanding the foregoing, so long as the Series 2019 A Bonds are outstanding, the CTUB shall remit the Lease Rentals directly to the Authority as the Registered Owner of the Series 2019 A Bonds.

C. **CHANGE OF FISCAL AGENT.** The Issuer may designate another bank or trust company insured by FDIC as Depository Bank if the Depository Bank should cease for any reason to serve or if the Issuer determines by resolution that the Depository Bank or its successor should no longer serve as Depository Bank. Upon any such change, the Issuer will cause notice of the change to be sent by registered or certified mail to the Authority.

D. **CHARGES AND FEES.** The CTUB shall remit from the Gross Revenues of the Facilities to the Depository Bank such additional sums as shall be necessary to pay the charges and fees of the Depository Bank then due.

E. **REMITTANCES.** All remittances made by the Issuer to the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

ARTICLE V

DEMISING CLAUSES AND LEASE RENTALS

Section 5.01. Leasing of the Facilities – Lease Term; Option to Terminate. In consideration of the Lease Rentals to be received by the Issuer and of the covenants, agreements and promises herein contained to be kept and performed by the City and the CTUB, and in consideration of the issuance of the Series 2019 A Bonds by the Issuer and other good and valuable consideration, the Issuer hereby demises and leases the Facilities to the City and the City hereby hires, takes and leases the Facilities from the Issuer, for the Lease Term, agrees to pay to, through the CTUB, the Lease Rentals to the Authority on behalf of the Issuer and on the conditions herein set forth.

The term of the demise and leasing of the Facilities by the Issuer to the City, subject to the provisions hereof, shall commence immediately upon the Closing Date, and shall extend, unless sooner terminated in accordance with the provisions hereof, to the Maturity Date (the “Lease Term”); provided, however, that the Lease Term shall expire on such earlier date as the entire outstanding principal of and interest, if any, on the Series 2019 A Bonds shall have been paid to, and confirmed by, the Authority.

NOTWITHSTANDING THE FOREGOING OR ANYTHING HEREIN OR IN THE ISSUER ORDINANCE, LOAN AGREEMENT OR THE ASSIGNMENT TO THE CONTRARY, THE ISSUER HEREBY GRANTS TO THE CITY THE OPTION TO TERMINATE THIS LEASE DURING ANY FISCAL YEAR COVERED HEREBY, IN ACCORDANCE WITH THE ACT AND OTHER PROVISIONS OF LAW, AND IN THE EVENT OF THE EXERCISE OF SUCH OPTION TO TERMINATE THIS LEASE, THE PAYMENTS OF LEASE RENTALS HEREUNDER SHALL BE CANCELED WITHOUT PENALTY TO THE CITY AT THE END OF THE THEN CURRENT FISCAL YEAR, WHEREUPON THE CITY SHALL SURRENDER THE FACILITIES TO THE ISSUER AT THE END OF THE THEN CURRENT FISCAL YEAR. UNLESS OTHERWISE LIMITED BY LAW, THE CITY COVENANTS TO PROVIDE THE ISSUER AND THE AUTHORITY WITH WRITTEN NOTICE, IN ACCORDANCE WITH SECTION 11.01 HEREOF, OF ITS INTENTION TO EXERCISE SUCH OPTION TO TERMINATE THIS LEASE NOT LESS THAN 90 DAYS PRIOR TO THE END OF THE FISCAL YEAR IN WHICH THE CITY ELECTS TO EXERCISE SUCH OPTION.

Section 5.02. Lease Rentals. The City hereby pledges to pay, through the CTUB, directly to the Authority the Lease Rentals available from the Facilities as provided in Section 4.06 hereof.

This Lease is a net lease, and the Issuer shall be under no obligation to operate, maintain, insure, replace or improve the Facilities or pay the cost thereof so long as this Lease remains in force and effect, but shall be entitled to have the Lease Rentals paid to the Authority as required herein on an absolute net basis, and, except as provided otherwise in Section 5.01.

Section 5.03. City’s and CTUB’s Obligations - Limited Obligations. The Issuer, the City and the CTUB covenant and agree that, during the term of this Lease, the CTUB shall, on behalf of the City, bear all risk of damage or destruction in whole or in part to the Facilities or any part thereof

including, without limitation, any loss, complete or partial, or interruption in the use, occupancy or operation of the Facilities, or any manner or thing which for any reason interferes with, prevents or renders burdensome the use or occupancy of the Facilities or the compliance by the CTUB with any of the terms hereof. Notwithstanding the foregoing or anything herein to the contrary, the CTUB's obligations, on behalf of the City, to pay the Lease Rentals and to perform and observe the other covenants and agreements contained herein, shall be special and limited obligations of the City and CTUB payable solely from the Lease Rentals and shall not, in any event, be or constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation or constitute or give rise to a pecuniary liability of the City. The Series 2019 A Bonds shall have no lien on, nor be payable from, the Gross Revenues of the CTUB Sewer System or the CTUB Combined Utility System. Neither the Issuer nor any holder of any Bond shall ever have the right to compel the exercise of the taxing power of the City to pay the Lease Rentals and any other sums provided hereunder or to pay the principal of the Series 2019 A Bonds or the interest thereon. The obligations of the City and CTUB hereunder shall never be a charge against or pledge of the property, faith and credit or taxing power of the City, nor shall the Series 2019 A Bonds have any lien on, or be payable from, the Gross Revenues of the CTUB Sewer System or the CTUB Combined Utility System.

Section 5.04. City and CTUB Remedies. Nothing contained in this Article shall be construed to release the Issuer from the performance of any of its agreements herein, and if the Issuer should fail to perform any such agreement, the City, or the CTUB on its behalf, may institute such action against the Issuer as the City or CTUB may deem necessary to compel the performance or to recover damages for nonperformance, subject to Section 8.07 hereof, so long as such action shall not violate the agreements of the City and the CTUB in Section 5.03 hereof. The CTUB may, on behalf of the City, at its own cost and expense, and in its own name or in the name of the Issuer, prosecute or defend any action or proceeding against third parties or take any other action which CTUB deems reasonably necessary in order to secure or protect its right of possession, occupancy and use of the Facilities under this Lease, subject to the terms hereof. In that event the Issuer agrees to cooperate fully with the City and CTUB, and to take all action necessary to effect the substitution of the City or CTUB for the Issuer in any such action or proceeding if the City or CTUB shall so request.

Section 5.05. Appropriation. The Series 2019 A Bonds are payable solely from the Lease Rentals and the City has no obligation to appropriate funds from any other source to pay principal of, or interest, if any, on the Series 2019 A Bonds.

Section 5.06. Transfer of Facilities upon Earlier of Payment of all Principal of and Interest, if any, on or the Maturity Date of, Series 2019 A Bonds. Upon the earlier of (i) the payment in full of the outstanding principal of and interest, if any, on the Series 2019 A Bonds; or (ii) the Maturity Date of the Series 2019 A Bonds, the Loan Agreement, the Deed of Trust, the Assignment and this Lease shall be terminated and released and the Facilities shall be transferred to the CTUB for \$10.00 in consideration. The Issuer, the City and the CTUB shall cause to be executed and recorded such releases or other documents as shall be necessary or appropriate to effectuate and properly record such termination and release and transfer of real and personal property.

ARTICLE VI
COVENANTS RELATING TO THE USE
AND OPERATION OF THE FACILITIES

Section 6.01. Taxes and Assessments. Subject to the provisions of Section 6.04 hereof, the CTUB shall, on behalf of the City, pay any and all lawfully assessed taxes, charges, fees, fines, impositions, liens and assessments, general and specific, ordinary and extraordinary, if any, levied, taxed, imposed or assessed upon or on account of the use or operation of the Facilities or any part or portion thereof, or the interest of the Issuer the City or the CTUB, or any of them, in or to the Facilities, or upon the Issuer's and City's interest, or the interest of either of them, in this Lease or the Lease Rentals payable hereunder during the term of this Lease, and all water, sewer and other utility charges, assessments, and other legally enforceable governmental charges and impositions whatsoever. The CTUB will, on behalf of the City, furnish to the Issuer and the Purchaser all notices of amounts due under this Section when requested to do so.

If, under applicable law, any such tax, charge, fee, fine, imposition, lien, rate, imposition or assessment may, at the option of the taxpayer, be paid in installments, the CTUB may exercise such option, except to the extent otherwise provided. The CTUB covenants and agrees that it will, at its own cost and expense, obtain exemption from all taxes and other charges referred to in this Section 6.01 to the extent permitted under applicable law.

As between the parties hereto, the CTUB shall have the duty of making and filing all statements or reports which may be required under applicable law in connection with any such tax, charge, fee, rate, imposition or assessment, or otherwise related to the Facilities, and the Issuer agrees promptly to forward to the CTUB any and all notice of or bills in connection with any such charge, fee, rate, fine, imposition, lien or assessment; provided, however, that an Authorized Officer of the Issuer shall execute and file, or execute and cause to be filed, in a timely fashion, all statements and filings relating to the Facilities which it is required by law to file, notwithstanding the foregoing or anything herein to the contrary. The Issuer hereby grants to the City and the CTUB the right to use the name of the Issuer, to the extent the use of the name of the Issuer is permitted by or necessary under applicable law, in connection with any contest of the amount or validity of any tax, charge, fee, rate, imposition or assessment. If the provisions of any law, rule or regulation at the time in effect shall require such statements or reports to be executed and filed by the Issuer or such proceedings to be brought by the Issuer, the Issuer shall, at the request and expense of the CTUB, execute and file such statements or reports or, as the case may be, shall join in such proceedings, but the Issuer shall not be subject to any liability for the payment of any costs or expenses in connection therewith and the CTUB covenants, to the extent permitted by law, to indemnify and save the Issuer harmless from such costs and expenses. The City and the CTUB covenants and agrees that all statements, reports and other documents prepared for execution by the Issuer solely or by the Issuer jointly with the City and/or CTUB, shall be true, accurate and complete.

Nothing contained herein shall be deemed to constitute an admission by the Issuer, the City or the CTUB to any third party other than the Authority that the Issuer, the City or the CTUB is liable for any tax, charge, fee, rate, lien, imposition or assessment.

Section 6.02. Liens. Subject to the provisions of Section 6.04 hereof relating to permitted contests, the Issuer, the City and the CTUB will not create or permit to be created or remain and will, at their respective cost and expense, promptly discharge all liens, encumbrances and charges on the Facilities or any part thereof, other than Permitted Encumbrances.

Section 6.03. Compliance with Orders, Ordinances, Etc. Subject to the provisions of Section 6.04 hereof relating to permitted contests, the CTUB shall, throughout the terms of this Lease, at its sole cost and expense, promptly comply in all material respects with all laws, codes, ordinances, orders, decrees, rules, regulations and requirements of duly constituted authorities which may be applicable to the Facilities, specifically including, but not limited to, the West Virginia Department of Environmental Protection or to the repair and alteration thereof, or to the use, manner of use or leasing of the Facilities. This Lease shall be amended by the Parties hereto to the full extent necessary to ensure compliance with all such laws, codes, ordinances, orders, decrees, rules, regulations and requirements to enable the continued operation of the Facilities by the CTUB on behalf of the City but not in any manner which would materially adversely affect or impair the obligations of the Issuer under the Issuer Ordinance, the Loan Agreement or the Assignment or materially adversely affect or impair the Issuer Ordinance, the City Ordinance, the Loan Agreement, the Deed of Trust or the Assignment or the liens created thereby and hereby, based upon an opinion of counsel.

Section 6.04. Permitted Contests. Except as otherwise expressly provided herein, the CTUB shall not be required to pay any tax, charge, fee, rate, imposition or assessment referred to in Section 6.01 hereof, nor to remove any lien, charge or encumbrance required to be removed under Section 6.02 hereof, nor to comply with any law, code, ordinance, order, decree, rule, regulation or requirement referred to in Section 6.03 hereof, so long as the CTUB shall contest, in good faith and at its cost and expense, in its own name and behalf or in the name and behalf of the Issuer and/or the City, the amount or validity thereof, in an appropriate manner or by appropriate proceedings which shall operate during the pendency thereof to prevent the collection of, or other realization upon, the tax, charge, fee, rate, imposition, assessment, lien or encumbrance so contested, and the sale, forfeiture, or loss of the Facilities or any part or portion thereof, or of the rent or any portion thereof, to satisfy the same; provided, that no such contest shall subject the City, the Issuer or the Authority to the risk of any liability. While any such matters are pending, except as otherwise required herein, the CTUB shall not pay, remove or cause to be discharged the tax, charge, fee, rate, imposition, assessment, lien or encumbrance being contested unless the CTUB agrees to settle such contest. Each such contest shall be promptly prosecuted to final conclusion (subject to the right of the CTUB to settle any such contest), and in any event the CTUB will, to the extent permitted by law, save the Issuer, the City and the Authority harmless against all losses, judgments, decrees and costs (including attorney's fees and expenses in connection therewith) and will, promptly after the final determination of such contest or settlement thereof, pay and discharge the amounts which shall be levied, assessed, imposed or determined to be payable therein, together with all penalties, fines, interest, costs and expenses thereon or in connection therewith. The CTUB shall give the Issuer and the City prompt written notice of any such contest and the Issuer and the City agree to cooperate with the CTUB, at the CTUB's cost and expense, in any such contest.

Notwithstanding any rights granted to the CTUB under the preceding paragraph of this Section 6.04, if the Issuer, the City or the Authority shall notify the CTUB that, in the opinion of independent counsel, by nonpayment of any of the foregoing items, the Issuer Ordinance, the Loan Agreement, the Deed of Trust or the Assignment or the lien as to any substantial part of the Facilities will be materially endangered or the Facilities or any part thereof will be subject to imminent loss or forfeiture or the rights or obligations of the Issuer, the City or the Authority under the Issuer Ordinance, the Loan Agreement, the Deed of Trust or the Assignment shall in any way be materially adversely affected or impaired or the lien, pledge and security interest of this Lease, the Issuer Ordinance, the Loan Agreement, the Deed of Trust or the Assignment shall be materially or adversely affected or impaired, then the CTUB shall promptly, but in any event in not more than 5 days from receipt by the CTUB of such notification, pay all such unpaid items or cause them to be stayed, satisfied and discharged.

Section 6.05. Design, Acquisition, Construction and Equipping of Facilities; Use, Operation and Maintenance of Facilities. A. Commencing on the Closing Date, the CTUB shall, carry out and complete the design, acquisition, construction and equipping of the Facilities and will not abandon, the Project.

B. During the Lease Term, the CTUB shall, on behalf of the City, use and operate the Facilities as a sanitary sewerage collection and transmission system in compliance with applicable State law.

Section 6.06. Repairs, Maintenance and Alterations. The CTUB will, throughout the Lease Term, keep and maintain the Facilities in good condition and repair and not abandon the same, or any part or portion thereof, nor commit or permit the commission of waste on or in the Facilities, or any part or portion thereof, or permit any of the Real Property or Personal Property comprising the Facilities to be removed, destroyed, demolished or structurally altered in whole or in part except as permitted herein and shall ensure compliance with all laws, ordinances, rules and regulations relating to the use, leasing or maintenance of the Facilities, and will make all necessary repairs thereto, structural and non-structural, ordinary as well as extraordinary and foreseen as well as unforeseen, and all necessary replacements or renewals.

The CTUB shall have the right from time to time, in its sole discretion, to make additions, alterations and changes (hereinafter collectively referred to as "alterations") in or to the Facilities, provided, however, that no alteration of any kind shall be made which would result in a violation of the provisions of Section 6.05 hereof.

With respect to any repairs, construction, renovation, restoration, replacement or alterations performed upon the Facilities by the CTUB during the Lease Term, in accordance with or as required by any provisions hereof, the CTUB agrees that:

(1) No work in connection therewith shall be undertaken until the CTUB shall have procured and paid for, so far as the same may be required, from time to time, all municipal and other governmental permits and authorizations of the various municipal departments and governmental

subdivisions having jurisdiction, and the Issuer and the City agree to join in the application for such permits or authorizations whenever such action is necessary;

(2) All work in connection therewith shall be done promptly and in good workmanlike manner and in compliance with the building and zoning laws of the municipality or other governmental subdivision wherein the Facilities are situate, and with all laws, ordinance, orders, rules, regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof, and shall not violate the provisions of any policy of insurance covering the Facilities, and the work shall be prosecuted with reasonable dispatch, unavoidable delays excepted; and

(3) CTUB shall carry or cause to be carried workers' compensation coverage for all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against the Issuer, the City or the CTUB, and general liability insurance (specifically covering this class of risk) for the mutual benefit of the Issuer, the City and the CTUB in such amounts as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure and as otherwise required or permitted by applicable law. The general liability insurance provided for in this paragraph may be effected by an appropriate endorsement, if obtainable, upon the insurance referred to in Section 6.09 hereof. All such insurance shall be provided by financially sound and reputable insurance companies qualified to do business in the State.

Section 6.07. Renewal and Replacement of Equipment. In any instance where the CTUB in its sole discretion determines that any items of personal property, specifically including fixtures or equipment, have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the CTUB may remove such items from the Facilities and sell, trade-in, exchange or otherwise dispose of them (as a whole or in part) without any responsibility or accountability therefor, provided, that such removal or substitution shall not impair the operating utility of the Facilities.

Section 6.08. Installation of Furnishings, Fixtures and Equipment by the CTUB. The CTUB may from time to time in its sole discretion and at its own cost and expense, install or place other personal property, specifically including but not limited to, fixtures or equipment in or on the Facilities. Except as otherwise expressly provided herein, the CTUB may remove such personal property, including fixtures or equipment, at its own cost and expense, whether or not the same shall have been affixed or annexed to the Facilities, but any damage caused to the Facilities by any such removal shall be restored at the sole cost and expense of the CTUB.

Section 6.09. Insurance and Construction Bonds. A. The CTUB hereby covenants and agrees that so long as the Series 2018 A Bonds remain Outstanding, the CTUB will procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the Facilities. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the Facilities in an amount equal to the actual cost thereof. In time of war the CTUB will also carry and maintain insurance

to the extent available against the risks and hazards of war. In the event of any damage to or destruction of any portion of the Facilities, the proceeds of all such insurance policies shall be used only for the repairs and restoration of the damaged or destroyed portions of the Facilities. The CTUB will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the CTUB, the Issuer, the City, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Facilities on a 100% basis (completed value form) on the insurable portion of the Facilities, such insurance to be made payable to the order of the Authority, the Issuer, the City, the CTUB, the contractors and subcontractors, as their interests may appear.

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

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

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

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

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the CTUB custody of the Gross Revenues of the Facilities, in an amount at least equal to the total funds in the custody of any such person at any one time.

B. The Issuer shall require all contractors engaged in the acquisition, construction and equipping of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The CTUB shall, prior to commencement of acquisition, construction and equipping of the Project, verify the sufficiency of such bonds under State law, and such performance and payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

The CTUB shall also require all contractors engaged in the acquisition, construction and equipping of the Project to carry such workers' compensation coverage for all employees working on the

Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided, that the amounts and terms of such coverage are satisfactory to the Authority and the Council and the CTUB shall verify such insurance prior to commencement of construction. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the City, the CTUB, the prime contractor and all subcontractors, as their interests may appear.

Section 6.10. Authority's Rights to Perform City's Covenants; Advances; Inspection of Premises. In the event the City or CTUB shall fail to (i) pay any tax, charge, assessment, imposition, fee, fine or lien pursuant to Section 6.01 hereof, (ii) remove any lien, encumbrance, or charge pursuant to Section 6.02 hereof, (iii) maintain the Facilities in repair pursuant to Section 6.06 hereof, (iv) procure the insurance required by Section 6.09 hereof, or (v) fail to make any other payment (other than Lease Rentals) or perform any other act required to be performed hereunder, then and in each such case the Authority may (but shall not be obligated to) remedy such default for the account of the City or CTUB and make advances for that purpose; provided, that this clause shall not otherwise abate the obligations of the Issuer under the Ordinance, the Loan Agreement, the Deed of Trust or the Assignment with respect thereto. No such performance or advance shall operate to release the City or CTUB from any such default or constitute acquiescence therein and any sums so advanced by the Authority shall be repayable by the City or CTUB on demand. The Authority shall have the right of entry on the Facilities or any part or portion thereof at reasonable times in order to effectuate the purposes of this Section 6.10 and in order to inspect the premises.

Section 6.11. CTUB Shall Manage, Operate and Administer Facilities. The CTUB shall have the sole right and discretion subject to the terms of the Issuer Ordinance, the Loan Agreement, the Deed of Trust, the Assignment and this Lease, during the Lease Term, to operate, manage and administer the Facilities, including, but not limited to, all decisions with respect to hiring and discharge of employees, acquiring and selling of furnishings, fixtures or equipment or additional property, and all other matters incidental to the operation, management and administration of the Facilities, and the CTUB shall further pay all Operation and Maintenance Expenses attributable to the Facilities.

Section 6.12. Permits, Etc. The CTUB hereby represents, warrants and covenants, all such representations and warranties to be applicable upon and following issuance of the Series 2019 A Bonds and to be maintained until termination of this Lease, that the CTUB has obtained or received and will obtain and receive and has and will keep in full force and effect, all consents, permits, licenses, approvals, certificates, exemptions, rights, orders, franchises, privileges and authorizations, all of which have been validly granted, issued and/or assigned, and has timely made and/or submitted and will timely make and/or submit all declarations, filings, payments, reports, notices, statements, papers and registrations, necessary to enter into and perform its obligations under and consummate the transactions contemplated in this Lease and all other documents, agreements, instruments and certificates in connection therewith, to lease, use and operate the Facilities; and the CTUB has taken and will take all other action required in connection with this Lease, the consummation of the transactions contemplated herein and all other documents, agreements, instruments and certificates in connection herewith, for the leasing, use and operation of the Facilities. The CTUB is and will remain in compliance with all applicable laws, rules and regulations relating to the Facilities.

ARTICLE VII

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.01. Damage or Destruction. The CTUB agrees to notify the Issuer, the City and the Authority immediately in the case of loss or damage covered by insurance required under 6.09(A) hereof and shall remit to the Authority the proceeds required to be paid to the Authority to be held in an appropriately designated fund. The City will apply such insurance proceeds to the repair, reconstruction or restoration of such damaged real property or personal property so as to ensure that sanitary sewerage service continues to be provided to the Facilities Customers as soon as reasonably possible.

Section 7.02. Condemnation. Immediately after the commencement of any condemnation or similar proceedings by a third party in the exercise of a power of eminent domain, or a power in the nature of eminent domain which in any way affects the Facilities, the CTUB shall immediately notify the Issuer, the City and the Authority in writing. The Net Proceeds of any condemnation award or other compensation paid by reason of a conveyance in lieu of the exercise of such power, with respect to the Facilities or any part or portion thereof shall be paid to the Authority to be held in an appropriately designated fund. The CTUB shall promptly proceed to replace or restore such part or portion of the Facilities, including any fixtures, furniture, equipment and effects, to its original usefulness and condition or a condition of at least an equivalent value immediately prior to such event, insofar as possible. The moneys required for such replacement or restoration shall be paid: (i) from the proceeds of such condemnation award, or other compensation, which proceeds or other compensation shall be transferred to a fund held by or on behalf of the Authority (in escrow or as otherwise acceptable to the Authority) and disbursed in accordance with a requisition procedure acceptable to the Authority; and (ii) to the extent that such proceeds are not sufficient, from the proceeds of additional lease revenue bonds to be issued by the Issuer and purchased by the Authority pursuant to the same terms as the Series 2019 A Bonds.

ARTICLE VIII

ADDITIONAL COVENANTS OF THE CITY, THE CTUB AND OTHERWISE

Section 8.01. Maintenance of Existence. The City agrees that it will do or cause to be done all things necessary to preserve and keep in full force and affect its existence and the existence of the CTUB.

Section 8.02. [Reserved].

Section 8.03. Books and Records. The CTUB will keep books and records of the Facilities, which shall be separate and apart from all other books, records and accounts of the CTUB, in which complete and correct entries shall be made of all transactions relating to the Facilities, and any Holder of the Series 2019 A Bonds shall have the right at all reasonable times to inspect the Facilities and all parts or portions thereof and all records, accounts and data of the CTUB relating thereto.

The accounting system for the Facilities shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by applicable law. Separate control accounting records shall be maintained by the CTUB. 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 CTUB. The CTUB shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the supervision of the CTUB shall be reported to such agent of the CTUB as the CTUB shall direct.

The CTUB shall, at least once a year, cause its books, records and accounts to be audited and upon receipt of the report shall immediately mail such report to the Holder of Series 2019 A Bonds.

Section 8.04. No Representation by Issuer as to Suitability. The City and the CTUB acknowledge (i) that the Issuer has made no warranty, either express or implied, as to the suitability of the Facilities to provide sanitary sewerage collection and transmission service, and (ii) that the City is in entering into, and the CTUB agreeing to the terms and conditions of, this Lease based solely upon CTUB's knowledge of the Facilities.

Section 8.05. Liens and Encumbrances. The Issuer, the City and the CTUB covenant that they will not, directly or indirectly, create, assume, incur or suffer to exist any mortgage, pledge, encumbrance, lien, security interest or charge of any kind upon the Facilities or upon the Lease Rentals or proceeds of the Series 2019 A Bonds except Permitted Encumbrances and except as expressly allowed herein.

Section 8.06. City Authorization. The City covenants and warrants that it is duly authorized, under the Constitution and laws of the State and under all other applicable provisions of law, to execute and deliver this Lease, that all action on its part for the authorization of this Lease has been duly and effectually taken, that the Lease is and will be a valid and enforceable obligation of the City in accordance with its terms and as herein set forth, and that the City, through the CTUB, now has or will use its best efforts to obtain complete and lawful authority and privilege to maintain and operate the Facilities and that no consents, certificates, orders, permits, rights, franchises, registrations, licenses, exemptions, filings, approvals, authorizations, declarations or privileges of the CTUB, all of which are currently in full force and effect, will be allowed to lapse or be forfeited so long as the same shall be necessary for the operation and/or maintenance of the Facilities and that the City will, through the CTUB, procure the extension or renewal of each and every permit, consent, certificate, order, right, franchise, registration, license, exemption, filing, declaration, approval, authorization or privilege so expiring and necessary or desirable for the operation and/or maintenance of the Facilities.

Section 8.07. Indemnity. To the fullest extent allowed by law and the Constitution of the State, the CTUB shall, solely from the Gross Revenues of the Facilities or from the proceeds of insurance obtained by CTUB as required by Section 6.09(a) hereof, pay, and will protect, indemnify and save the Issuer, the City and the Authority harmless from and against any and all liabilities, losses, damages, costs and expenses (including attorney's fees and expenses of the Issuer and the Authority), causes of actions, suits, claims, demands, actions, proceedings and judgments of any nature arising from or caused by:

(1) Any injury to or death of any person or damage of property in or upon the Facilities, or growing out of or connected with the use, nonuse, condition or occupancy of the Facilities or a part or portion thereof; any repairs, construction or alterations and remodeling thereto or the condition of the Facilities and any equipment or facilities at any time located on the Facilities or used in connection therewith;

(2) Violation of any agreement, warranty, covenant or condition hereof, except by the Issuer;

(3) Violation of any lease, contract, agreement or restriction by or upon the City or the CTUB relating to the Facilities, which shall have existed at the commencement of the Lease Term; and

(4) Violation of any law, ordinance, regulation, franchise or court order affecting the Facilities or a part thereof or the ownership, occupancy or use thereof.

Section 8.08. Maintenance of Security Interests, Etc. The City and CTUB will execute all documents, agreements and instruments, including, without limitation, financing statements provided for by the Uniform Commercial Code of the State, deemed necessary or advisable in the opinion of independent counsel for perfection of and continuance of the perfection of the liens, pledges and security interests created by this Lease, the Loan Agreement, the Deed of Trust, the Assignment, the Issuer Ordinance or the City Ordinance. However, all obligations of the City and the CTUB under this Section 8.08 are subject to the condition that the Issuer shall execute all documents, agreements and instruments, including, without limitation, all such financing statements, required of it in the opinion of independent counsel, and will file and record all such documents, agreements and instruments executed by the Issuer, the City and/or the CTUB, or cause them to be filed and recorded, and shall continue the security interests, pledges and liens of all such documents, agreements and instruments by appropriate refiling and re-recording as specified in the opinion of independent counsel, or cause them to be so continued, for as long as any Series 2019 A Bonds shall remain outstanding.

Section 8.09. Granting of Easements. If no Event of Default under this Lease shall have happened and be continuing, the City and the Issuer may, at the request of the CTUB, at any time or times (i) grant easements, licenses, rights of way (including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property included in the Facilities, free from any lien or (ii) release existing easements, licenses, rights of way and other rights or privileges with respect to any property included in the Facilities, all with or without consideration and upon such terms and conditions as the CTUB shall determine, and the Issuer agrees that it will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangements, upon receipt by the Issuer and the Authority of: (a) a copy of the instrument of grant or release or of the agreement or other arrangement, (b) a written application signed by an authorized officer of the entity requesting such instrument, (c) a certificate executed by an Authorized Representative of the CTUB stating that such grant or release is not detrimental to the use of the Facilities as intended, and (d) other evidence satisfactory to the Issuer and the Authority that action will not materially adversely affect the value of the Facilities.

Any such easement or right and the rights of such other parties thereunder shall not be affected by any termination of this Lease or default on the part of the City or CTUB hereunder. If no Event of Default shall have happened and be continuing, any payments or other consideration received by the CTUB for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the CTUB but, in the event of the termination of this Lease pursuant to Section 5.01 hereof or default of the City or CTUB, all rights then existing of the City and/or CTUB with respect to or under such grant shall inure to the benefit of and be exercisable by the Issuer and the Authority. No conveyance or release effected under the provisions of this Section shall entitle the City or CTUB to any abatement or diminution of the Lease Rental payable hereunder.

Section 8.10. [Reserved].

Section 8.11. Continued Operation of Facilities. In the event the City gives notice to the Issuer and the Authority of its election to exercise its option to terminate this Lease at the end of the then current Fiscal Year as provided in Section 5.01 hereof, the City covenants and agrees to use its best efforts to assign this Lease or sublease the Facilities or otherwise cause the Facilities to be operated or managed as a revenue-producing facility on substantially the same basis as provided in this Lease; provided, however, that no such assignment, sublease or management or operating agreement or contract shall be entered into without the prior written consent of the Issuer and the Authority.

ARTICLE IX **COVENANTS OF THE ISSUER**

Section 9.01. Restriction on Sale, Etc. The Issuer and the City acknowledge and agree that the Lease Rentals payable under this Lease are assigned and pledged as security for the Series 2019 A Bonds issued under the Issuer Ordinance and that the Issuer has entered into certain covenants with the Authority in the Issuer Ordinance, the Loan Agreement and the Assignment which may affect the Facilities and this Lease in the event of default hereunder. The Issuer agrees that it will not, except as contemplated herein, in the Issuer Ordinance, in the Loan Agreement or in the Assignment, enter into any other contract or agreement affecting this Lease, the Lease Rentals payable hereunder or the Facilities in any way or assign the same as security for any other obligations of the Issuer without the prior written consent of the City, the CTUB and the Authority.

Section 9.02. Prepayment of Series 2019 A Bonds. The Series 2019 A Bonds shall be terminated prior to the Maturity Date if the aggregate Lease Rentals paid by the CTUB to the Authority on behalf of the Issuer are sufficient to pay the entire outstanding principal of, and interest, if any, on, the Series 2019 A Bonds.

Section 9.03. Nature of Issuer's Covenants. The City acknowledges and agrees that any obligation of the Issuer created by or arising out of this Lease shall be payable solely out of the Lease Rentals, the proceeds of the Series 2019 A Bonds and any insurance and condemnation award received pursuant hereto. The foregoing limitation shall not, however, preclude the City or CTUB from seeking injunctive relief in any court to compel the Issuer to perform any such obligation.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES THEREFOR

Section 10.01. Events of Default Defined. The following shall be "Events of Default" under this Lease and the terms Event of Default or Default shall mean any one or more of the following events:

(A) Failure of the CTUB, on behalf of the City, to pay Lease Rentals as required pursuant to Section 5.02 hereof as and when available; or

(B) Failure of the City, the CTUB and/or the Issuer to perform any other covenant, condition or provision hereof and to remedy such failure within 30 days after notice thereof from the Issuer or the Authority to the City or the CTUB or from the Authority, the City or the CTUB to the Issuer, as the case may be; or

(C) If any representation or warranty made by the City in any statement or certificate furnished to the Issuer or the Authority in connection with the sale of the Series 2019 A Bonds or furnished by the City pursuant hereto proves untrue in any material respect as of the date of the issuance or making thereof and shall not be made good within 30 days after notice thereof to the City by the Issuer or the Authority; or

(D) If any representation or warranty made by the CTUB in any statement or certificate furnished to the Issuer or the Authority in connection with the sale of the Series 2019 A Bonds or furnished by the CTUB pursuant hereto proves untrue in any material respect as of the date of the issuance or making thereof and shall not be made good within 30 days after notice thereof to the CTUB by the Issuer or the Authority; or

(E) Any judgments, writs of execution, warrants of attachment or any similar process in an aggregate amount in excess of \$1,000,000 shall be entered or filed against the CTUB or against any of its property and remains unvacated, unpaid, unbonded or unstayed for a period of 30 days; or

(F) If the CTUB admits insolvency or bankruptcy or its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for the CTUB, or for any part of its property; or

(G) If a trustee or receiver is appointed for the CTUB or for any part of its property and is not discharged within 60 days after such appointment; or

(H) If bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against the City, and if instituted against the City are allowed against the City or are consented to or are not dismissed, stayed or otherwise nullified within 60 days after such institution;

(I) If the CTUB abandons substantially all of the Facilities (except as permitted by this Lease) for a period of 30 consecutive days;

(J) If there shall be a termination of this Lease under Section 5.01 hereof; or

(K) If there shall occur an "Event of Default" under the Issuer Ordinance, the Loan Agreement, the Deed of Trust, or the Assignment.

Section 10.02. Remedies on Default. If any Event of Default shall occur and be continuing, the Issuer may, at its option and with the consent of the Authority, exercise any one or more of the following remedies:

(A) The Issuer may terminate this Lease by giving to the City and the CTUB notice of the Issuer's intention so to do, in which event the Lease Term shall end, and all right, title and interest of the City and CTUB hereunder shall expire, on the date stated in such notice, which shall not be less than 10 days after the date of the notice by the Issuer of its intention so to terminate; or

(B) The Issuer may terminate the right of the City and CTUB to possession of the Facilities or any portion thereof by giving notice to the City and the CTUB that the right of possession of the City and the CTUB shall end on the date stated in such notice, which shall not be less than 10 days after the date of notice by the Issuer of its intention so to terminate; or

(C) The Issuer may enforce the provisions of this Lease and may enforce and protect the rights of the Issuer hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy; or

(E) The Issuer may, upon written notice to the City and the CTUB, revoke or rescind any and all rights and options of the City and the CTUB hereunder.

Section 10.03. Right of Re-Entry. If an Event of Default shall occur, the Issuer may then or at any time thereafter re-enter and take complete and peaceful possession of the Facilities or any portion thereof, with or without process of law, and may remove all persons therefrom, and the City and the CTUB covenant that, in any such event it will peacefully and quietly yield up and surrender the Facilities and any part or portion thereof to the Issuer.

Section 10.04. [Reserved].

Section 10.05. Damages in the Event of Termination. In the event of the termination of this Lease by the Issuer pursuant to Section 10.02 hereof, the Issuer shall be entitled to recover immediately from the CTUB, payable solely from the Gross Revenues of the Facilities, to the fullest extent allowed by law: (i) the aggregate principal amount of all Series 2019 A Bonds then outstanding; (ii) the total amount of all unpaid interest accrued or to accrue until payment of all Series 2019 A Bonds; and (iii) such amounts as will be sufficient to pay all costs and expenses, including attorneys' fees, which the Issuer and the Authority shall have sustained by reason of the breach of any of the covenants of this Lease other than for the payment of rent.

Section 10.06. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 10.07. No Additional Waiver Implied by One Waiver. In the event the breach of any agreement contained herein should be waived by any party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.08. Remedies to be Performed by the Authority. Notwithstanding any provision in this Article X to the contrary, to the extent provided in the Assignment, the Authority shall have any right to affect any remedy hereunder. The Issuer shall cooperate fully with the Authority in performing or affecting any such remedy.

ARTICLE XI **GENERAL**

Section 11.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid, with proper address as indicated below. The Issuer, the City, and the original Authority may, by written notice given by each to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated hereby. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

ISSUER:

Charles Town Building Commission
101 East Washington St.
Charles Town, West Virginia 25414
Attention: Chairman

CITY:

City of Charles Town
 101 East Washington St.
 Charles Town, West Virginia 25414
 Attention: Mayor

CTUB

Charles Town Utility Board
 832 South George Street
 Charles Town, West Virginia 25414
 Attention: General Manager

AUTHORITY:

West Virginia Water Development Authority
 1009 Bullitt St.
 Charleston, WV
 Attention: Executive Director

Section 11.02. Assignment of Lease. Except for the duties and responsibilities to be assumed by the CTUB as set forth herein, the City shall not, without the prior written consent of the Issuer and the Authority, assign this Lease or any portion hereof, subject to the provisions of Section 8.11 hereof. Simultaneously with the delivery hereof, this Lease has been assigned by the Issuer pursuant to and by the Assignment to the Authority, and the City consents to such assignment by the Issuer to the Authority.

Section 11.03. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Issuer, the City, the CTUB and their respective successors and permitted assigns.

Section 11.04. Severability. If any provision of this Lease, including, without limitation, the remedies granted hereunder, shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or Sections in this Lease contained, shall not affect the remaining portions of this Lease, or any part thereof.

Section 11.05. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State.

Section 11.06. Amendments, Changes and Modifications. Except as otherwise provided in this Lease, but only with the written consent of the Authority subsequent to the issuance of the Series 2019 A Bonds and before the Ordinance and the Assignment are satisfied and discharged in accordance with their terms, this Lease may not be effectively amended, changed, modified, altered or terminated nor may any provision be waived hereunder.

Section 11.07. Survival. All covenants, representations or warranties contained herein or in any certificates delivered pursuant hereto, shall survive delivery and termination of this Lease and payment or the Maturity Date of the Series 2019 A Bonds.

Section 11.08. Execution Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the CHARLES TOWN BUILDING COMMISSION and the CITY OF CHARLES TOWN have caused this Lease to be executed in their respective corporate names, and have caused their corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized, all as of the date first above written.

CHARLES TOWN BUILDING COMMISSION

[SEAL]

By: _____
Its: Chairman

ATTEST:

By: _____
Its: Secretary

CITY OF CHARLES TOWN

[SEAL]

By : _____
Its: Mayor

ATTEST:

By: _____
Its: City Clerk

AGREED TO BY:

CHARLES TOWN UTILITY BOARD

By: _____
Its: Chairperson

Attachment: Building Commission and Charles Town Lease - Route 9 Sewer (3252 : Route 9 Sewer Project - Lease Ordinance)

The foregoing instrument was prepared by John C. Stump of Steptoe & Johnson PLLC, 707 Virginia Street, East, P.O. Box 1588, Charleston, West Virginia, 25326. West Virginia State Bar No. 6385.

STATE OF WEST VIRGINIA,

COUNTY OF JEFFERSON, To-Wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, Chairman of the CHARLES TOWN BUILDING COMMISSION, a public corporation and municipal building commission, on behalf of said public corporation.

My commission expires: _____.

[NOTARIAL SEAL]

Notary Public

STATE OF WEST VIRGINIA,

COUNTY OF JEFFERSON, To-Wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, Mayor of the CITY OF CHARLES TOWN, a municipal corporation and political subdivision of the State of West Virginia, on behalf of said municipal corporation.

My commission expires: _____.

[NOTARIAL SEAL]

Notary Public

Attachment: Building Commission and Charles Town Lease - Route 9 Sewer (3252 : Route 9 Sewer Project - Lease Ordinance)

EXHIBIT A – PROJECT MAP

Attachment: Building Commission and Charles Town Lease - Route 9 Sewer (3252 : Route 9 Sewer Project - Lease Ordinance)

EXHIBIT B – REAL PROPERTY

EXHIBIT C – PERSONAL PROPERTY



 west virginia department of environmental protection

Division of Water and Waste Management
 601 57th Street SE
 Charleston, WV 25304
 Phone (304) 926-0495
 Fax (304) 926-0497

Austin Caperton, Cabinet Secretary
 dep.wv.gov

March 1, 2019

Jane E. Arnett, Utility Manager
 City of Charles Town, Utility Board
 832 South George Street
 Charles Town, WV 25414

CERTIFIED RETURN RECEIPT REQUESTED

Re: WV/NPDES Permit No. WV0022349
 Modification No. 8

Dear Ms. Arnett:

This correspondence shall serve as Modification No. 8 of your existing WV/NPDES Water Pollution Control Permit No. WV0022349, issued the 21st day of July 2016.

After review and consideration of the information submitted on, and with, Permit Modification Application No. WV0022349-H, dated the 1st day of October 2018, the subject permit is hereby modified to incorporate the following:

1. The permittee may accept non-domestic wastewater from Rockwool (IU02) for treatment and disposal at the Charles Town's main wastewater treatment plant (design flow of 1.75 MGD). The non-domestic wastewater approved for acceptance consists of RO reject wastewater and water softener wastewater from the treatment of finished drinking water from the Jefferson Utilities, Inc. The maximum daily volume accepted shall not exceed 17,000 gallons per day. The actual volume of the non-domestic wastewater accepted shall be measured and recorded daily. The acceptance of any other non-domestic wastewater is prohibited.
2. Section F of the permit has been revised to incorporate the relative pretreatment requirements for acceptance of the non-domestic wastewater from ROCKWOOL. A revised Section F is attached to this modification.
3. Section A.IU02 has been incorporated into the permit which contains the relevant pretreatment monitoring requirements and limitations on the non-domestic wastewater from ROCKWOOL to ensure that the non-domestic wastewater does not cause pass-

Promoting a healthy environment.



Building Commission
101 East Washington Street
Charles Town, WV 25414

Meeting: 03/19/19 04:00 PM
Department: City Manager's Office
Category: Ordinance
Initiator: Daryl Hennessy

3.1

TABLED

AGENDA ITEM (ID # 3242)

Third and Final Reading of an Ordinance Authorizing the Design, Acquisition, Construction and Equipping of a Public Sewerage System of the Charles Town Building Commission and the Financing of the Cost, Not Otherwise Provided, Thereof through the Issuance of Not More Than \$16,000,000 in Aggregate Principal Amount of Lease Revenue Bonds, Series 2018 a (West Virginia Infrastructure Fund); Providing for the Rights and Remedies of and Security for the Registered Owners of Such Bonds; Authorizing Execution and Delivery of All Documents Relating to the Issuance of Such Bonds; Approving, Ratifying and Confirming a Loan Agreement Relating to the Bonds; Authorizing the Sale and Providing for the Terms and Provisions of Such Bonds and Adopting Other Provisions Relating Thereto.

This is the proposed third and final reading of an ordinance to issue up to \$16 million in bonds to finance the construction of a Route 9 sewer line and related components. The building commission will only vote on this issue if city council authorizes them to do so and agrees to enter into a lease agreement to pay for the project. The building commission will only be asked to vote on this ordinance if doing so helps them carry out the will the city council. Staff views the building commission's vote as a transactional matter. The policy question of financing the sewer line and related components is being considered by city council.

The first reading of this ordinance occurred on July 2, 2018. The second reading of this ordinance occurred on July 9, 2018. The public hearing for this ordinance occurred on August 6, 2018.

Attached to this agenda item are: (1) the proposed Building Commission Lease Revenue Bond ordinance, and (2) a resolution from the Charles Town Utility Board recommending approval of the ordinance as proposed (i.e. accepting the state financing).

HISTORY:

03/05/19 Building Commission TABLED

Motion was made by Commissioner Veler seconded by Commissioner Glascock to accept the reading.

Motion was made by Commissioner Veler seconded by Commissioner McDonald to go into executive session. The Commission returned to public session.

Updated: 2/28/2019 9:50 AM by Daryl Hennessy



Page 1

Packet Pg. 4

Commissioner McDonald read the following public statement regarding the written protest, we have been advised by legal counsel that the written protest could only be filed in a timely manner at the public hearing on August 6, 2018. Accordingly, the written protest may not be accepted however, the Building Commission does acknowledge and appreciate the time and effort that has gone into collecting those signatures.

Motion was made by Commissioner Veler seconded by Commissioner Glascock to table the discussion and motion of the 3rd reading until such a time City Council enacts the ordinance and authorizes the lease.

ATTACHMENTS:

- Route 9 Sewer Project (\$16 million) - Building Commission Lease Revenue Bonds (PDF)
- CTUB Resolution 2019-01 Route 9 Sewer Project Funding (PDF)

CHARLES TOWN BUILDING COMMISSION

BOND ORDINANCE

ORDINANCE AUTHORIZING THE DESIGN, ACQUISITION, CONSTRUCTION AND EQUIPPING OF A PUBLIC SEWERAGE SYSTEM OF THE CHARLES TOWN BUILDING COMMISSION AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE OF NOT MORE THAN \$16,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF LEASE REVENUE BONDS, SERIES 2018 A (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO THE BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE BOARD OF THE CHARLES TOWN BUILDING COMMISSION:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. **Authority for this Ordinance.** This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 8, Article 33 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

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

A. The City of Charles Town (the "City") has created and established the Charles Town Building Commission (the "Issuer"), a public corporation and municipal building commission, pursuant to the authority granted to it in Chapter 8, Article 33 of the West Virginia Code of 1931, as amended.

B. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed public sewerage system of the Issuer, at an estimated cost of not more than \$16,000,000, specifically including, but not limited to, two (2) pump stations, approximately 16,700 linear feet of sanitary sewer force main and

approximately 9,240 linear feet of gravity sanitary sewer main, and all necessary appurtenances along West Virginia State Route 9 (collectively, the "Project").

C. The Issuer intends to permanently finance a portion of the costs of design, acquisition, construction and equipping of the Project through the issuance of its lease revenue bonds to the West Virginia Water Development Authority (the "Authority"), which administers the West Virginia Infrastructure Fund on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Lease Revenue Bonds, Series 2018 A (West Virginia Infrastructure Fund), in the total aggregate principal amount of not more than \$16,000,000 (the "Series 2018 A Bonds"), in one or more series, to permanently finance the costs of design, acquisition, construction and equipping of the Project. The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2018 A Bonds prior to and during design, acquisition, construction and equipping of the Project and for a period not exceeding 6 months after completion of design, acquisition, construction and equipping of the Project; 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, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2018 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the design, acquisition, construction or equipping 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 2018 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

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

F. It is in the best interests of the Issuer that its Series 2018 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, on behalf of the Council, in form satisfactory to the Issuer and the Authority, to be approved hereby if not previously approved by resolution of the Issuer.

G. There are no outstanding bonds or obligations of the Issuer which will rank on a parity with the Series 2018 A Bonds as to liens, pledge and source of and security for payment.

H. All revenue (the "Lease Revenue") received by the Issuer under and pursuant to a Lease and Purchase Agreement (the "Lease Agreement"), by and between the Issuer and the City of Charles Town (the "City"). All Lease Revenue paid by the City to the Issuer under the Lease Agreement will be transferred to the West Virginia Municipal Bond Commission and

applied to the payment of the principal of the Series 2018 A Bonds. Pursuant to the Lease Agreement, the City has agreed to operate and maintain the System through the Charles Town Utility Board, solely from the revenues generated from customers of the System.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the design, acquisition, construction, equipping and operation of the Project and the System and issuance of the Series 2018 A Bonds, or will have so complied prior to issuance of any thereof.

J. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2018 A Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such 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 Bondholders of any and all of such Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

"Act" means, collectively, Chapter 8, Article 33 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2018 A Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the Council under the Act.

"Authorized Officer" means the Chairman of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

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

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

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

"Bonds" means, collectively, the Series 2018 A Bonds, the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

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

"Closing Date" means the date upon which there is an exchange of the Series 2018 A Bonds for all or a portion of the proceeds of the Series 2018 A Bonds from the Authority and the Council.

"City" or "Lessee" means the City of Charles Town, West Virginia.

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

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

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

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

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

"CTUB" means the Charles Town Utility Board or any successor thereto.

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

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

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

"Governing Body" means the board of the Issuer or any other governing body of the Issuer that succeeds to the functions of the board as presently constituted.

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

"Grant" means any Grant received by the Issuer for the Project.

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

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

"Issuer" means the Charles Town Building Commission, a public corporation and municipal building commission of the State of West Virginia in Jefferson County of said State, and unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Lease Agreement" means the Lease and Purchase Agreement by and between the Issuer and the City, as it may be amended from time to time.

"Lease Revenues" means the revenues received by the City under and pursuant to the Lease Agreement.

"Loan Agreement" means the Loan Agreement heretofore entered, or to be entered, into between the Issuer and the Authority, on behalf of the Council, providing for the purchase of the Series 2018 A Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Maturity Date" means the date set forth in the Supplemental Resolution upon which the Series 2018 A Bonds mature.

"Net Proceeds" means the face amount of the Series 2018 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any.

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

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

"Paying Agent" means the Commission or other entity designated as such for the Series 2018 A Bonds in the Supplemental Resolution.

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

"Qualified Investments" means and includes any investment permitted to be made by a municipality, public service district or public corporation of the State pursuant to State Law, specifically including but not limited to Chapter 8, Article 13, Section 22 of the Code of West Virginia and the West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the Code of West Virginia.

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

"Registrar" means the Bond Registrar.

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

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

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

"Series 2018 A Bonds" means the Lease Revenue Bonds, Series 2018 A (West Virginia Infrastructure Fund), of the Issuer, authorized by this Ordinance.

"Series 2018 A Bonds Construction Trust Fund" means the Series 2018 A Bonds Construction Trust Fund created by Section 5.01 hereof.

"Series 2018 A Bonds Sinking Fund" means the Series 2018 A Bonds Sinking Fund created by Section 5.02 hereof.

"Sinking Fund" means the Sinking Fund established for the Series 2018 A Bonds.

"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 2018 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental

Resolution with respect to the Series 2018 A Bonds, and not so included, may be included in another Supplemental Resolution.

"System" means the complete public sewerage facilities of the Issuer and shall include the Project and any additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever, all of which shall be subject to the Lease Agreement.

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

"West Virginia Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Chapter 31, Article 15A, Section 9 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

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

ARTICLE II

AUTHORIZATION OF DESIGN, ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT

Section 2.01. Authorization of Design, Acquisition, Construction and Equipping of the Project. There is hereby authorized and ordered the design, acquisition, construction and equipping of the Project, at an estimated cost of not to exceed \$16,000,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2018 A Bonds hereby authorized shall be applied as provided in Article VI hereof. The CTUB, on behalf of the City, will receive bids and enter into contracts for the acquisition, construction and equipping of the Project, compatible with the financing plan submitted to the Council.

The cost of the Project is estimated not to exceed \$16,000,000 which will be obtained from proceeds of the Series 2018 A Bonds.

ARTICLE III

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

Section 3.01. Authorization of Bonds. For the purposes of paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2018 A Bonds of the Issuer. The Series 2018 A Bonds shall be issued as a single bond, designated "Lease Revenue Bond, Series 2018 A (West Virginia Infrastructure Fund)", in the principal amount of not more than \$16,000,000 in one or more series, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2018 A Bonds shall be deposited in or credited to the Series 2018 A Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2018 A Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum rate, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in the Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2018 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America.

Unless otherwise provided by the Supplemental Resolution, the Series 2018 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a record of advances attached, representing the aggregate principal amount of the Series 2018 A Bonds, all as provided in the Supplemental Resolution. The Series 2018 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest, if any, as set forth in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2018 A Bonds shall be executed in the name of the Issuer by the Chairman, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed the Series 2018 A Bonds shall cease to be such officer of the Issuer before the Series 2018 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be

issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any such 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 2018 A Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Series 2018 A Bonds shall be conclusive evidence that such Series 2018 A Bonds has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2018 A Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 2018 A Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2018 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2018 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2018 A Bonds remain outstanding, the Bond Registrar for the Bonds shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2018 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2018 A Bonds or transferring the registered Bonds are exercised, all Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2018 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate (where

applicable) 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 2018 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Lease Revenues as herein provided. No holder or holders of the Series 2018 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2018 A Bonds or the interest, if any, thereon. The Issuer has no taxing power.

Section 3.08. Bonds Secured by Pledge of Lease Revenues. The payment of the debt service of all Series 2018 A Bonds shall be secured by a first lien on the Lease Revenues. Such Lease Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2018 A Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2018 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2018 A Bonds to the original purchasers upon receipt of the documents set forth below:

- (1) If other than the Authority, a list of the names in which the Series 2018 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;
- (2) A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2018 A Bonds to the original purchasers;
- (3) An executed and certified copy of the Bond Legislation;
- (4) An executed copy of the Loan Agreement;
- (5) A copy of the Lease Agreement; and
- (6) The unqualified approving opinion of bond counsel on the Series 2018 A Bonds.

Section 3.10. Form of Bonds. The text of the Series 2018 A Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2018 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CHARLES TOWN BUILDING COMMISSION
LEASE REVENUE BOND, SERIES 2018 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR- 1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That this ____ day of ____, 2018 the CHARLES TOWN BUILDING COMMISSION, a public corporation and municipal building commission of the State of West Virginia in Jefferson County of said State (the "Issuer"), for value received, hereby promises to pay, except as further provided herein, 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.

The Series 2018 A Bonds are originally issued in the form of one bond, registered to the Authority. No payments of principal are due on the Series 2018 A Bonds for at least one year after the Closing Date. The Series 2018 A Bonds shall bear no interest and shall mature forty (40) years from the date of issuance. Commencing _____ 1, 20____, The Issuer shall pay, each month, the entirety of the Lease Revenues received from the City; provided, however, if the Roxul USA, Inc. Facility ("Roxul") is not operational on _____ 1, 20____, then the payments shall be deferred quarterly until such time as Roxul is operating at full production capacity. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Series 2018 A Bond may be redeemed prior to its stated date of maturity in whole, but only with the express written consent of the Authority on behalf of 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 by and between the Issuer and the Authority, on behalf of the Council, dated _____, 2018 (the "Loan Agreement").

This Series 2018 A Bond is issued (i) to pay the costs of design, acquisition, construction and equipping of a public sewerage collection system of the Issuer (collectively, the "Project"); and (ii) to pay certain costs of issuance of the Series 2018 A Bonds of this Series (the "Series 2018 A Bonds") and related costs. The Project and any further additions, betterments or

improvements thereto are herein called the "System." This Series 2018 A 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 33 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2018, and a Supplemental Resolution duly adopted by the Issuer on _____, 2018 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Series 2018 A Bonds under the Bond Legislation.

THE ISSUER HAS NO BONDS OR OBLIGATIONS OTHER THAN THIS SERIES 2018 A BOND WHICH IS SECURED BY THE LEASE REVENUES.

This Series 2018 A Bond is payable only from and secured by a pledge of the Lease Revenues (as defined in the Bond Legislation), and from unexpended proceeds of the Series 2018 A Bonds. Such Lease Revenues shall be set aside as a special fund hereby pledged for such purpose. This Series 2018 A Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same except from said special fund provided from the Lease Revenues and unexpended proceeds of the Series 2018 A Bonds. The Issuer has entered into certain further covenants with the registered owners of the Series 2018 A Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Series 2018 A 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 Series 2018 A Bond is transferable, as provided in the Bond Legislation, only upon the books of United Bank, Charleston, West Virginia, as registrar (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Series 2018 A 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 Series 2018 A 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 Series 2018 A Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Series 2018 A Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance

of this Series 2018 A 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 Series 2018 A 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 Lease Revenues has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Series 2018 A Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Series 2018 A Bond is issued shall be deemed to be a part of the contract evidenced by this Series 2018 A Bond to the same extent as if written fully herein.

In the event that the Lease Revenues from the System have not been sufficient to pay the entirety of the principal of the Series 2018 A Bond, on _____, the maturity date of the Series 2018 A Bond, all remaining outstanding principal on the Series 2018 A Bond shall be forgiven, all obligations of the Issuer and the City pursuant to the Series 2018 A Bond, the Bond Legislation and the Lease Agreement shall terminate, and ownership of the System shall transfer, without further action by any party, to the City. Neither the WDA, nor any subsequent holder of the Series 2018 A Bond, shall have any recourse for the remaining outstanding principal amount of the Series 2018 A Bond against the Issuer, the City, or any successors thereto.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the CHARLES TOWN BUILDING COMMISSION has caused this Series 2018 A Bond to be signed by its Chairman, and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Series 2018 A Bond to be dated as of the day and year first written above.

[SEAL]

Chairman

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This bond is one of the Series 2018 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2018.

UNITED BANK,
as Registrar

Authorized Officer

EXHIBIT ARECORD OF ADVANCES

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

(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:

Attachment: Route 9 Sewer Project (\$16 million) - Building Commission Lease Revenue Bonds (3242 : Route 9 Sewer Line Financing)

Section 3.11. Sale of Series 2018 A Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2018 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Chairman is specifically authorized and directed to execute the Loan Agreement and the Secretary is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, is hereby approved and incorporated into this Bond Legislation.

Section 3.12. Filing of "Amended Schedule". Upon completion of the acquisition and construction of the Project, the Issuer will file with the Council and the Authority a schedule, the form of which will be provided by the Council, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; LEASE REVENUES AND APPLICATION THEREOF

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

- (1) Revenue Fund; and
- (2) Series 2018 A Bonds Construction Trust Fund.

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

- (1) Series 2018 A Bonds Sinking Fund

Section 5.03. Lease Revenues; Flow of Funds. A. The entire Lease Revenues shall, each month, 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 provided in this Bond Legislation. All Lease Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

- (1) The Issuer shall, on the first day of each month, transfer all monies in the Revenue Fund to the Commission to be applied to the payment of principal of the Series 2018 A Bonds.

Monies in the Series 2018 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2018 A Bonds as the same shall become due.

All investment earnings on monies in the Series 2018 A Bonds Sinking Fund shall be used for the payment of principal of the Series 2018 A Bonds.

The Issuer shall not be required to make any further payments into the Series 2018 A Bonds Sinking Fund when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2018 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2018 A Bonds Sinking Fund and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by either the Authority or the Council at any time, the Issuer shall make the necessary arrangements whereby required payments into the Series 2018 A Bonds Sinking Fund shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2018 A Bonds Sinking Fund shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2018 A Bonds Sinking Fund shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2018 A Bonds Outstanding under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if such day is not a business day, then the first business day of each month) deposit with the Commission the all monies deposited in the Revenue Fund to be applied to the payment of principal of the Series 2018 A Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement.

D. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so

transferred and paid into such funds during the following month or such other period as required by law.

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, fees and expenses then due.

F. The monies in excess of the maximum amounts insured by FDIC in any of the funds or 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. [RESERVED]

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

ARTICLE VI

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of any or all of the Series 2018 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2018 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2018 A Bonds Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02 hereof and until so expended, are hereby pledged as additional security for the Series 2018 A Bonds.

B. 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 2018 A Bonds shall be used as directed in writing by the Council.

Section 6.02. Disbursements From the Bond Construction Trust Fund. 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 shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2018 A Bonds Construction Trust Fund shall be made only after submission to and approval from the Council, of a certificate, signed by an Authorized Officer, stating that:

- (i) None of the items for which the payment is proposed to be made has been requested from another funding source;
- (ii) 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;
- (iii) Each of such costs has been otherwise properly incurred; and
- (iv) Payment for each of the items proposed is then due and owing.

Pending such application, monies in the Series 2018 A Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. **General Covenants of the Issuer.** All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2018 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2018 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2018 A Bonds is Outstanding and unpaid.

Section 7.02. **Bonds not to be Indebtedness of the Issuer.** The Series 2018 A Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the Lease Revenues.

Section 7.03. **Bonds Secured by Pledge of Lease Revenues.** The payment of the debt service of the Series 2018 A Bonds shall be secured by a first lien on the Lease Revenues. The Lease Revenues are hereby irrevocably pledged, in the manner provided herein, to payment of the principal of the Bonds, and for the other purposes provided in the Bond Legislation.

Section 7.04. **Rates and Charges.** Pursuant to the Lease Agreement. the rates and charges for the System shall be charged pursuant to the tariff of the City.

Section 7.05. **Sale of the System.** The Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided by the Lease Agreement. Additionally, so long as the Series 2018 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority, the System may not,

except as provided by the Lease Agreement, be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds of any such sale, lease, mortgage or other disposition of the System shall, with respect to the Series 2018 A Bonds, immediately be remitted to the Commission for deposit in the Series 2018 A Bonds Sinking Fund, and the Issuer shall direct the Commission to apply such proceeds to the payment of principal of the Series 2018 A Bonds. Any balance remaining after payment of all the Series 2018 A Bonds shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the Lease Revenues.

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 \$250,000, the Issuer shall, in writing, 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 derived from 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 \$250,000 but not in excess of \$500,000, 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 the Governing Body may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding in accordance with the laws of the State. The proceeds derived from any such sale shall be deposited in the Revenue Fund. Payment of such proceeds into the Revenue Fund shall not reduce the amounts required to be paid into such funds by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$500,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders of all Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Lease Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any obligations whatsoever payable from the Lease Revenues of the System without the prior written consent of the Authority.

Section 7.07. Additional Parity Bonds. No Additional Parity Bonds, payable out of the Lease Revenues of the System, shall be issued after the issuance of the Series 2018 A

Bonds, except with the prior written consent of the Authority under the conditions and in the manner provided.

All Additional Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2018 A Bonds.

No such Additional Parity Bonds shall be issued except for the purpose of financing the costs of the design, acquisition, construction and equipping of extensions, additions, betterments or improvements to the System or refunding all or a portion of the Series 2018 A Bonds issued pursuant hereto, or both such purposes.

No Additional Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of such Additional 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 costs of design, acquisition, construction and equipping the Project. The Issuer shall permit the Authority and the Council or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the Council such documents and information as they may reasonably require in connection with the design, acquisition, construction and equipping of the Project, and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the Council or their agents and representatives, to inspect all records pertaining to the Project at all reasonable times following completion of the Project.

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 Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Council and the Authority, or any other original purchaser of the Series 2018 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2018 A Bonds, requesting the same, an annual report containing the following:

- (A) A statement of Lease Revenues.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.
- (C) The amount of any Bonds, notes or other obligations payable from the revenues of the System outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent legally required, in compliance with 2CFR 200 Subpart F, or any successor thereto), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2018 A Bonds and shall submit the report to the Authority and the Council, or any other original purchaser of the Series 2018 A Bonds. Such audit report submitted to the Authority and the Council shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation.

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

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

Section 7.09. [RESERVED]

Section 7.10. System Operations. Pursuant to the Lease Agreement the City shall operate and maintain the System.

Section 7.11. Engineering Services and Operating Personnel. The Issuer shall obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the 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 design, acquisition, construction and equipping of the Project have been obtained.

The City shall provide and maintain competent and adequate engineering services satisfactory to the Authority and the Council 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, the City 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.

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. To the extent operation and maintenance is performed by the City, the Issuer shall enforce the Lease Agreement to fulfill compliance with this covenant.

Section 7.13. Enforcement of Collections. The Issuer shall require the City, through the Lease Agreement, to diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals 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, through the Lease Agreement, require the City, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, to discontinue and shut off the services of the System, to all users of the services of the System delinquent in payment of charges for the services of the System and not restore such services 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 to take all further actions to enforce collections to the maximum extent permitted by law.

Section 7.14. No Free Services. The Issuer will require that the City, through the Lease Agreement, 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 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, the City and any such department, agency, instrumentality, officer or employee.

Section 7.15. Insurance and Construction Bonds. A. Pursuant to the Lease Agreement the City shall maintain insurance on the System. Such insurance shall initially cover the following risks and be in the following amounts:

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

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

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

(4) FLOOD INSURANCE, to be procured, to the extent available at reasonable cost; provided, however, if the Project is located in a community which has been notified as having special flood or mudslide prone areas, flood insurance must be obtained.

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

B. All contractors engaged in the construction of the Project shall be required to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful

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

The Issuer shall require that the City shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the Council. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear. The City shall verify such insurance prior to commencement of construction.

Section 7.16. Connections. Pursuant to the Lease Agreement, the Issuer shall require the City, to the extent permitted by the laws of the State and rules and regulations of the Public Service Commission of West Virginia, require every owner, tenant or occupant of any house, dwelling, or building intended to be served by the System to connect thereto.

Section 7.17. Completion, Operation and Maintenance of Project; Permits and Orders. The Issuer shall complete, or cause to be completed under the Lease Agreement, the Project as promptly as possible. Pursuant to the terms of the Lease Agreement, the City, through the Charles Town Utility Board, will enter into the construction contracts and will be the agent of the Issuer for all purposes related to the design, acquisition, construction and equipping of the Project.

Pursuant to the Lease Agreement, the City has agreed to operate and maintain the System. The Issuer shall enforce the provisions of the Lease Agreement to fulfill compliance with this covenant.

Pursuant to the Lease Agreement, the City will obtain all permits required by state and federal laws for the design, acquisition, construction and equipping of the Project, and all orders and approvals required by State law necessary for the operation of the System.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act and shall by Supplemental Resolution approve such additional terms and conditions set forth in the Loan Agreement. The Issuer shall, and through the Lease Agreement shall require the City, comply with all applicable laws, rules and regulations issued by the Authority, the Council, or other state, federal or local bodies in regard to the acquisition and construction of the Project. The Issuer shall provide the Council with copies of all documents submitted to the Authority.

Section 7.19. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2018 A 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 2018 A Bonds.

Section 7.20. Securities Laws Compliance. The Issuer shall provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.21. Contracts; Change Orders and Public Releases. A. Pursuant to the Lease Agreement, the City shall, simultaneously with the delivery of the Series 2018 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition, construction and equipping of the Project.

B. The Issuer and/or the City shall submit all proposed change orders to the Council for written approval. The Issuer and/or the City shall obtain the written approval of the Council before expending any proceeds of the Series 2018 A Bonds held in "contingency" as set forth in the Schedule B attached to the Certificate of Consulting Engineer. Written approval of the Council shall be obtained before expending any proceeds of the Series 2018 A Bonds made available due to bid or construction or project underruns.

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

ARTICLE VIII

INVESTMENT OF FUNDS; USE OF PROCEEDS

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

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted

by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year (or more often if reasonably requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2018 A Bonds are Outstanding.

Section 8.02. Certificate as to Use of Proceeds; Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2018 A Bonds as a condition to issuance of the Series 2018 A 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 2018 A Bonds as may be necessary in order to maintain the status of the Series 2018 A 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 2018 A 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 or the Council, as the case may be, from which the proceeds of the Series 2018 A Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority or the Council, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

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

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2018 A Bonds:

- (1) If the Issuer fails to pay the Lease Revenues to the Commission for the payment of the principal of the Series 2018 A Bonds; or
- (2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2018 A Bonds set forth in this Bond Legislation, any Supplemental Resolution or in the Series 2018 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the

Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or

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

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Series 2018 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 Lease Revenues which have not been paid to the Commission; (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, (iii) bring suit upon the Series 2018 A Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Series 2018 A Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Series 2018 A Bonds, or the rights of such Registered Owners.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Series 2018 A Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the payment of Lease Revenues to the Commission for payment of the principal on the Series 2018 A Bonds. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

Whenever all Lease Revenues have been paid to the Commission or the outstanding principal of the Bonds as of the Maturity Date has been forgiven by the Authority or the then holder thereof, as provided in Section 10.02 hereof, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

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

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

ARTICLE X

PAYMENT OF BONDS; FORGIVENESS OF OUTSTANDING PRINCIPAL OF SERIES 2018 A BONDS AS OF MATURITY DATE

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holder of the Series 2018 A Bonds, the principal of and interest, if any, due or to become due thereon, prior to the Maturity Date, then the pledge of Lease Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Series 2018 A Bonds, shall thereupon cease, terminate and become void and be discharged and satisfied.

Section 10.02. Forgiveness of Outstanding Principal as of Maturity Date. In the event that the Lease Revenues from the System have not been sufficient to pay the entirety of the principal of the Series 2018 A Bonds as of the Maturity Date of the Series 2018 A Bonds, all remaining outstanding principal on the Series 2018 A Bonds shall be forgiven, all obligations of the Issuer and the City pursuant to the Series 2018 A Bonds, the Bond Legislation and the Lease Agreement shall terminate, and ownership of the System shall transfer, without further action by any party, to the City. Neither the WDA, nor any subsequent holder of the Series 2018 A Bonds, shall have any recourse for the remaining outstanding principal amount of the Series 2018 A Bond against the Issuer, the City, or any successors thereto.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2018 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2018 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2018 A Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2018 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or the rate of interest, if any, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the 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 excludability of interest, if any, on the Series 2018 A Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2018 A Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2018 A Bonds.

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

Section 11.05. Notices. All notices to be sent to the Issuer, the City, the Authority or the Council shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class mail, postage prepaid, addressed as follows:

ISSUER:

Charles Town Building Commission
101 E. Washington Street
Charles Town, West Virginia 25414
Attention: Chairman

CITY:

City of Charles Town
 101 E. Washington Street
 Charles Town, West Virginia • 25414
 Attention: Mayor

AUTHORITY:

Water Development Authority
 1009 Bullitt Street
 Charleston, West Virginia
 Attention: Director

COUNCIL:

West Virginia Infrastructure Council
 1009 Bullitt Street
 Charleston, West Virginia
 Attention: Executive Director

All notices to be sent to the Issuer hereunder shall also be sent to the City, and all notices to be sent to the Council hereunder, shall also be sent to the Authority.

Section 11.06. Conflicting Provisions Repealed. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed; provided, that this section shall not be applicable to the Loan Agreement.

Section 11.07. 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 Chairman, the Secretary 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 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the *Spirit of Jefferson and Farmer's Advocate*, a newspaper published and of general circulation in Jefferson County, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2018 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Section 11.09. Effective Date. This Ordinance shall take effect immediately following the public hearing hereon and the final reading hereof.

Passed on First Reading: - July 2, 2018
Passed on Second Reading: - July 9, 2018
Passed on Final Reading - August 6, 2018
Following Public
Hearing:

CHARLES TOWN BUILDING COMMISSION

Chairman

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Board of the CHARLES TOWN BUILDING COMMISSION on the 6th day of August, 2018.

Dated: _____, 2018.

[SEAL]

Secretary

CHARLES TOWN BUILDING COMMISSION

LEASE REVENUE BONDS, SERIES 2018 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

BOND ORDINANCE

Table of Contents

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01	Authority for this Ordinance
Section 1.02	Findings
Section 1.03	Bond Legislation Constitutes Contract
Section 1.04	Definitions

ARTICLE II

**AUTHORIZATION OF DESIGN, ACQUISITION, CONSTRUCTION
AND EQUIPPING OF THE PROJECT**

Section 2.01	Authorization of Design, Acquisition, Construction and Equipping of the Project
--------------	---

ARTICLE III

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

Section 3.01	Authorization of Bonds
Section 3.02	Terms of Bonds
Section 3.03	Execution of Bonds
Section 3.04	Authentication and Registration
Section 3.05	Negotiability, Transfer and Registration
Section 3.06	Bonds Mutilated, Destroyed, Stolen or Lost
Section 3.07	Bonds not to be Indebtedness of the Issuer
Section 3.08	Bonds Secured by Pledge of Lease Revenues
Section 3.09	Delivery of Bonds
Section 3.10	Form of Bonds
	FORM OF SERIES 2018 A BOND

Section 3.11	Sale of Bonds; Approval and Ratification of Execution of Loan Agreement
Section 3.12	Filing of "Amended Schedule"

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; LEASE REVENUES AND APPLICATION THEREOF

Section 5.01	Establishment of Funds and Accounts with Depository Bank
Section 5.02	Establishment of Funds and Accounts with Commission
Section 5.03	Lease Revenues; Flow of Funds

ARTICLE VI

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01	Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds
Section 6.02	Disbursements From the Bond Construction Trust Fund

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01	General Covenants of the Issuer
Section 7.02	Bonds not to be Indebtedness of the Issuer
Section 7.03	Bonds Secured by Pledge of Lease Revenues
Section 7.04	Rates and Charges
Section 7.05	Sale of the System
Section 7.06	Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances
Section 7.07	Parity Bonds
Section 7.08	Books; Records and Audit
Section 7.09	Rates
Section 7.10	System Operations
Section 7.11	Engineering Services and Operating Personnel
Section 7.12	No Competing Franchise
Section 7.13	Enforcement of Collections
Section 7.14	No Free Services
Section 7.15	Insurance and Construction Bonds
Section 7.16	Connections
Section 7.17	Completion, Operation and Maintenance of Project; Permits and Orders
Section 7.18	Compliance with Loan Agreement and Law
Section 7.19	Statutory Mortgage Lien
Section 7.20	Securities Laws Compliance

Section 7.21 Contracts; Change Orders and Public Releases

ARTICLE VIII

INVESTMENT OF FUNDS; USE OF PROCEEDS

Section 8.01 Investments
Section 8.02 Certificate as to Use of Proceeds; Covenants as to Use of Proceeds

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01 Events of Default
Section 9.02 Remedies
Section 9.03 Appointment of Receiver

ARTICLE X

PAYMENT OF BONDS

Section 10.01 Payment of Bonds
Section 10.02 Forgiveness of Outstanding Principal on Maturity Date

ARTICLE XI

MISCELLANEOUS

Section 11.01 Amendment or Modification of Bond Legislation
Section 11.02 Bond Legislation Constitutes Contract
Section 11.03 Severability of Invalid Provisions
Section 11.04 Headings, Etc.
Section 11.05 Notices
Section 11.06 Conflicting Provisions Repealed
Section 11.07 Covenant of Due Procedure, Etc.
Section 11.08 Statutory Notice and Public Hearing
Section 11.09 Effective Date
SIGNATURES
CERTIFICATION



Charles Town

Utility Board

101 East Washington Street, P.O. Box 14, Charles Town, WV 25414
Phone: (304) 725-2311 ♦ Fax: (304) 725-1014 ♦ Web: www.charlestownwv.us

RESOLUTION NO. 2019-01

RESOLUTION OF THE CHARLES TOWN UTILITY BOARD IN SUPPORT OF THE ROUTE 9 SEWER INFRASTRUCTURE PROJECT STATE FUNDING PACKAGE

UTILITY BOARD

CHAIRMAN
*Daryl
Hennessy*

VICE
CHAIRMAN
*Pete
Kubic*

SECRETARY
TREASURER
*Karin
Tester*

*Michael
Sloner*

*Keith D.
Pierson, Mayor of
Ranson*

UTILITY
MANAGER
*Jane E.
Arnett*

WHEREAS, the Charles Town Utility Board has a responsibility to provide sewer service to all customers previously served by the City of Ranson and the Jefferson County Public Service District (JCPSD); and

WHEREAS, the Route 9 Sewer Project is within the former City of Ranson and JCPSD service areas; and

WHEREAS, the funding for the Route 9 Sewer Project is to be provided by the West Virginia State Economic Development Office at no cost to the City of Charles Town, and is clearly an advantage to the ratepayers; and

WHEREAS, on January 24, 2019, Roxul USA, Inc. (dba Rockwool) requested sanitary sewer service pursuant to Rule 5.5.e of the West Virginia Public Service Commission Rules solely for the property addressed at 365 Granny Smith Lane. This request was to provide service to Rockwool-only for buildout of Phase 1, Phase 1b and Phase 2 of 46,800 gallons; and

WHEREAS, concern is being expressed that a Rockwool-only line would eliminate future available capacity and connections to be made to this line and would impact the Flowing Springs project or a future capital project to serve the area acquired with the JCPSD. Concern is expressed as to how to provide service to that area including the Burr / Bardane Industrial Park that has had constraints for many years. Further, the J.C. Kunkle analysis presented both to the Utility Board and the City Council demonstrates that a Rockwool-only line would affect the timeline for rate equalization and the ability to complete future capital projects without higher rate impacts; and

WHEREAS, that based on the Hatch Chester Route 9 Infrastructure Project Design Report of Sewer, dated May 4, 2018, the cost estimate for the Rockwool-only line is \$9,000,000 with an additional impact to the ratepayers. And that in the alternate, acceptance of the State funding package at \$10,500,000 would allow the capability to provide needed infrastructure for future development, reduce the time period for rate equalization, lessen the rate impact of the Modified Flowing Springs project, and allow for major improvements at the Burr / Bardane Industrial Park; and

WHEREAS, the Route 9 Sewer project funding package is still in place and will convert to a grant at the end of 25 years;

Attachment: CTUB Resolution 2019-01 Route 9 Sewer Project Funding (3242 : Route 9 Sewer Line Financing)

RESOLUTION OF THE CHARLES TOWN UTILITY BOARD
IN SUPPORT OF THE ROUTE 9 SEWER INFRASTRUCTURE PROJECT STATE
FUNDING PACKAGE

Page 2 of 2

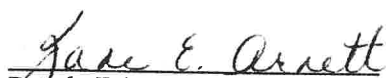
NOW THEREFORE BE IT RESOLVED, that the Charles Town Utility Board wishes to make the above recitals known, by motion from Keith D. Pierson, Mayor of Ranson, second by Kevin Tester and approved by the four members of the Utility Board, with the Chairman having recused himself from the discussion and vote;

AND FURTHER BE IT RESOLVED, that this is a statement of recommendation from the Charles Town Utility Board supporting the Route 9 Sewer Infrastructure Project State funding package and respectfully requests that the City of Charles Town City Council approve the Lease Agreement by and between the City of Charles Town and the Charles Town Building Commission and, further respectfully requests that the Charles Town Building Commission approve the 3rd reading of the bond for the Route 9 Sewer Infrastructure Project to receive the State funding;

AND FURTHER BE IT RESOLVED, that the Charles Town Utility Board hereby expressly thanks the honorable City of Charles Town Mayor, City Council members and Building Commission members for their consideration in these actions.


Vice Chairman Pete Kubic

Attest:


Dated: February 21, 2019

Attachment: CTUB Resolution 2019-01 Route 9 Sewer Project Funding (3242 : Route 9 Sewer Line Financing)