

**TOWN OF HARPERS FERRY  
WATER REVENUE BONDS  
SERIES 2024**

**BOND ORDINANCE**

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**TOWN OF HARPERS FERRY  
WATER REVENUE BONDS (CNB BANK, INC.)  
SERIES 2024**

**BOND ORDINANCE**

ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATERWORKS SYSTEM OF THE TOWN OF HARPERS FERRY, INCLUDING WITHOUT LIMITATION THE UPGRADE AND REPLACEMENT OF WATER LINES AND/OR WATER METERS, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF HARPERS FERRY OF WATER REVENUE BONDS, SERIES 2024 (CNB BANK, INC.), IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00); DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE SERIES 2024 BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITIES FOR THE HOLDERS OF THE SERIES 2024 BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT.

BE IT ENACTED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HARPERS FERRY:

## ARTICLE I

### STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any order, ordinance or resolution supplemental hereto or amendatory hereof, the “Bond Legislation”) is enacted pursuant to the provisions of Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the “Act”), and other applicable provisions of law.

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

A. The Town of Harpers Ferry (the “Issuer”) is a municipal corporation and political subdivision of the State of West Virginia in Jefferson County of said State.

B. The Issuer presently owns and operates a public waterworks system. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired, constructed and equipped certain additions, betterments and improvements to the Issuer’s existing waterworks system, including without limitation the upgrade and replacement of water lines and/or water meters described in Exhibit A hereto (collectively, the “Project”) (the Issuer’s existing waterworks system, the Project and any further additions, extensions, betterments and improvements thereto are herein called the “System”) in accordance with the plans and specifications prepared by Gwin, Dobson & Foreman, Inc., Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the Series 2024 Bonds and all Sinking Funds, Reserve Accounts and other payments provided for herein, all as such terms are hereinafter defined.

D. It is further deemed necessary for the Issuer to issue its Water Revenue Bonds, Series 2024 (CNB Bank, Inc.) (the “Series 2024 Bonds”) in the aggregate principal amount of not more than \$700,000, to permanently finance the costs of acquisition, construction and equipping of the Project. Said costs shall be deemed to include, but not be limited to, the cost of all property rights, easements and franchises deemed necessary or convenient therefor; all costs of the design, acquisition, construction and equipping of the Project; interest upon the Series 2024 Bonds prior to and during construction and acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Series 2024 Bonds Reserve Account; engineering, financing 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, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2024 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof,

provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2024 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 estimated maximum cost of the design, acquisition, construction and equipping of the Project and the issuance of the Series 2024 Bonds is \$3,450,000, not to exceed \$275,000 of which is estimated to be paid from funds of the Issuer available for such purpose, \$2,475,000 of which will be paid from a grant from the West Virginia Water Development Authority Economic Enhancement Grant Fund and the remainder will be obtained from the sale of the Series 2024 Bonds described above.

F. The period of usefulness of the System after completion of the Project is not less than 16 years.

G. It is in the best interest of the Issuer that its Series 2024 Bonds be issued and sold to the CNB Bank, Inc. (the “Purchaser”) pursuant to the terms and provisions of the commitment letter dated February 28, 2024, from the Purchaser to the Issuer (the “Commitment Letter”), the acceptance of the Commitment Letter being authorized, ratified, and affirmed hereby.

H. There are outstanding obligations of the Issuer which will rank on parity with the Series 2024 Bonds as to liens and sources of and security for payment, which obligations are designated and have the lien positions, together with the Series 2024 Bonds, as follows:

<u>Designation</u>	<u>Lien Position</u>
Water Revenue Bonds, Series 1986 A dated December 19, 1986, issued in the original aggregate principal amount of \$611,912 (the “Series 1986 A Bonds”)	First Lien
Water Revenue Bonds, Series 2008 (United States Department of Agriculture), Dated March 13, 2008, issued in the original aggregate principal amount of \$350,000 (the “Series 2008 Bonds”)	First Lien
Water Revenue Bonds, Series 2021 (United States Department of Agriculture), dated March 11, 2021, issued in the original principal amount of \$6,300,000 (the “Series 2021 Bonds” and together with the Series 1986A Bonds, and the Series 2008 Bonds, the “Prior Bonds”)	First Lien
The Series 2024 Bonds	First Lien



I. The Series 2024 Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2024 Bonds, the Issuer will obtain (a) a certificate of an Independent Accountant stating that the coverage and parity tests of the Prior Bonds are met, and (b) the written consent of the registered owners of the Prior Bonds to the issuance of the Series 2024 Bonds on a parity with the Prior Bonds. Except for the Prior Bonds the Issuer has no other bonds, notes, or other obligations secured by or payable from revenues or assets of the System.

J. The Issuer has complied with all requirements of West Virginia law relating to authorization of the planning, development, design, acquisition, construction and operation of the Project and the System and issuance of the Series 2024 Bonds or will have so complied prior to issuance of any thereof including, among other things, either the approval of the Project and the obtaining of a Certificate of Public Convenience and Necessity from the Public Service Commission of West Virginia (the “PSC”) by final order, the time for rehearing and appeal of which has expired prior to the issuance of the Series 2024 Bonds or has been waived by all necessary parties or a determination that such approval and certificate of the PSC are not required.

K. The Issuer will not permit, at any time, any of the proceeds of the Series 2024 Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Series 2024 Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended (the “Code”).

L. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2024 Bonds.

M. The Series 2024 Bonds will not be federally guaranteed within the meaning of the Code.

N. All things necessary to make the Series 2024 Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the Issuer according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Series 2024 Bonds, will be timely done and duly performed.

O. The adoption of this Ordinance, the acquisition, construction and equipping of the Project, the financing of a portion of the Costs of the of the Project with proceeds of the Series 2024 Bonds and the execution and issuance of the Series 2024 Bonds, subject to the terms thereof, will not result in any breach of, or constitute default under, any instrument to which the Issuer is a party or by which it may be bound or affected.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2024 Bonds by those who shall be the registered owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the registered owners of

any and all of such Bonds, as the case may be, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

“Act” means Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment hereof.

“Authorized Officer” means the Mayor of the Issuer or any other officer of the Issuer duly appointed by the Governing Body.

“Bond Counsel” shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the Issuer, and shall initially mean Bowles Rice LLP, Charleston, West Virginia.

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

“Bond Register” means the books of the Issuer maintained by the Registrar for the registration and transfer of Bonds.

“Bond Registrar” means CNB Bank, Inc. or other entity designated as such by the Issuer and its successors and assigns.

“Bond Year” means for the first year the 12-month period beginning on the Closing Date and continuing to the first anniversary of the Closing Date and thereafter beginning on the day after the anniversary date of the Closing Date and ending on the anniversary date of the Closing Date in the following year.

“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.

“Bonds” means, collectively, the Series 2024 Bonds, the Prior Bonds and, where appropriate, any bonds on a parity with the Series 2024 Bonds authorized to be issued hereunder or by another ordinance of the Issuer.

“Business Day” means any day other than a Saturday, Sunday or a day on which national banking association or West Virginia banking corporations are authorized by law to remain closed.

“Certificate of Determinations” means any Certificate of Determinations executed by the Mayor in connection with the Series 2024 Bonds as further provided in the Supplemental Resolution.

“Closing Date” means the date upon which there is an exchange of the Series 2024 Bonds for the advance of more than a de minimis amount of the principal of the Series 2024 Bonds by the Purchaser.

“Code” means the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder or under any prior code.

“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.

“Commitment Letter” means, collectively, the Commitment Letter of the Purchaser dated February 28, 2024, and all amendments thereto.

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

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

“Depository Bank” means any bank or national banking association located in the State of West Virginia, eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC that may be designated as such in the Supplemental Resolution or the Certificate of Determinations, and its successors and assigns by the Issuer as Depository Bank.

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

“Excess Investment Earnings” means the amount equal to the sum of:

(A) the excess of (i) the amount earned on all Nonpurpose Investments (other than investments attributable to an excess described in this subparagraph (A)), over (ii) the amount which would have been earned if such Nonpurpose Investments were invested at a rate equal to the yield on the issue, plus

(B) any income attributable to the excess described in subparagraph (A).

“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 Town Council of the Issuer, as it may now or hereafter be constituted.

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

“Gross Proceeds” means the definition that is given such term in Section 148(f)(6)(B) of the Code.

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

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

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

“Investment Property” shall mean any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

“Issuer” means Town of Harpers Ferry, a municipal corporation and political subdivision of the State of West Virginia in Jefferson County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

“Mayor” means the Mayor of the Issuer.

“Net Proceeds” means the face amount of the Series 2024 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 2024 Bonds Reserve Account, if any. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2024 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

“Operating Expenses” means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Depository Bank and Paying Agent (all as herein defined), payments to pension or retirement funds, taxes and such other reasonable

operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that “Operating Expenses” does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

“Ordinance” means, collectively, this ordinance and any order or resolution of the Governing Body supplemental hereto, including without limitation the Supplemental Resolution.

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

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

“Paying Agent” means the Commission or such other entity designated as such for the Series 2024 Bonds by the Issuer.

“Prior Bonds” means the Series 1986A Bonds, the Series 2008 Bonds and the Series 2021 Bonds.

“Prior Bonds Ordinances” means the respective ordinances, as supplemented and amended, authorizing the issuance of the Prior Bonds.

“Private Business Use” means use directly or indirectly in a trade or business carried on by a natural person, including all persons “related” to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons “related” to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to “incidental use,” if any, of the proceeds of the issue and/or proceeds used for “qualified improvements,” if any.

“Project” means the additions, betterments and improvements to the Issuer’s existing waterworks system, including the additions, betterments and improvements described in Exhibit A hereto.

“PSC” means the Public Service Commission of West Virginia or any successors thereof.

“Purchase Price,” for the purpose of computation of the yield of the Series 2024 Bonds, has the same meaning as the term “issue price” in Section 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Series 2024 Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers), at which price a substantial amount of the Series 2024 Bonds of each maturity is sold or, if the Series 2024 Bonds are privately placed, the price paid by the first buyer of the Series 2024 Bonds or the acquisition cost of the first buyer. “Purchase Price,” for purposes of computing yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Series 2024 Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Series 2024 Bonds.

“Purchaser” means CNB Bank, Inc.

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

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;
- (e) Deposit and time accounts (including accounts evidenced by time certificates of deposit, demand or time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of such other Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State;
- (f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;
- (g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said

repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

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

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

“Rebate Fund” means the fund created pursuant to Section 5.01 hereof.

“Recorder” means the Recorder of the Governing Body.

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

“Registrar” means the Bond Registrar.

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

“Renewal and Replacement Fund” means the Renewal and Replacement Fund established or continued by Section 5.01 hereof.

“Reserve Accounts” means the Series 2024 Bonds Reserve Account and the respective reserve accounts for the Prior Bonds.

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

“Series 1986A Bonds” means the Issuer’s Water Revenue Bonds, Series 1986A, dated December 19, 1986, issued in the original aggregate principal amount of \$611,912 (the “Series 1986 A Bonds”).

“Series 2008 Bonds” means the Issuer’s Water Revenue Bonds, Series 2008 (United States Department of Agriculture), dated March 13, 2008, issued in the original aggregate principal amount of \$350,000 (the “Series 2008 Bonds”).

“Series 2021 Bonds” means the Issuer’s Water Revenue Bonds, Series 2021 (United States Department of Agriculture), dated March 11, 2021, issued in the original principal amount of \$6,300,000 (the “Series 2021 Bonds”).

“Series 2024 Bonds” or “Series 2024 Bond” means the not to exceed \$700,000 in original principal amount of Water Revenue Bonds, Series 2024 (CNB Bank, Inc.) authorized hereby.

“Series 2024 Bonds Construction Trust Fund” means the Series 2024 Bonds Construction Trust Fund established by Section 5.01 hereof.

“Series 2024 Bonds Reserve Account” means the Series 2024 Bonds Reserve Account established in the Series 2024 Bonds Sinking Fund pursuant to Section 5.02 hereof.

“Series 2024 Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2024 Bonds in the then concurrent or any succeeding Fiscal Year.

“Series 2024 Bonds Sinking Fund” means the Series 2024 Bonds Sinking Fund established pursuant to Section 5.02 hereof.

“Sinking Funds” means the Series 2024 Bonds Sinking Fund and the respective sinking funds for the Prior Bonds, if any.

“State” means the State of West Virginia.

“Supplemental Resolution” means any resolution or order of the Issuer supplementing or amending this Ordinance.

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

“System” means the complete existing waterworks system now owned by the Issuer, in its entirety or any integral part thereof, and shall include the Project and any further extensions, additions, betterments and improvements thereto hereafter acquired or constructed for said waterworks system from any sources whatsoever, both within and without the Issuer.

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

“Yield” means the definition given that term in Section 148(h) of the Code.

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

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



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

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

## **ARTICLE II**

### **AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT**

Section 2.01. Authorization of Acquisition and Construction of the Project; Acceptance, Approval and Ratification of Commitment Letter. There is hereby authorized, ratified and affirmed the acquisition, construction and equipping of the Project, at an estimated maximum cost, including without limitation issuance costs, of \$3,450,000, 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 foregoing Project costs, including without limitation costs associated with the issuance of the Series 2024 Bonds, shall be paid with (i) funds of the Issuer available for such purpose in an estimated amount not to exceed \$275,000, (ii) \$2,475,000 from a grant from the West Virginia Water Development Authority Economic Enhancement Grant Fund and (iii) proceeds of the Series 2024 Bonds. The proceeds of the Series 2024 Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has entered into or will enter into contracts for the acquisition, construction and equipping of the Project, which are in an amount and otherwise compatible with the financing plan submitted to the Purchaser. The Commitment Letter is hereby accepted and approved, the execution thereof by the Mayor on behalf of the Issuer is hereby authorized, directed, ratified and approved and all prior acts taken in connection with the Commitment Letter are hereby ratified and approved.

## **ARTICLE III**

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

Section 3.01. Authorization of Series 2024 Bonds. Subject and pursuant to the provisions hereof, the Water Revenue Bonds of the Issuer, to be known as “Water Revenue Bonds, Series 2024 (CNB Bank, Inc.),” are hereby authorized to be issued in the original aggregate principal amount not to exceed \$700,000, the exact principal amount to be as set forth in the Series 2024 Bond executed by the Mayor, for the purpose of financing the costs of the acquisition, construction and equipping of the Project and paying costs relating to the issuance of the Series 2024 Bonds.

Section 3.02. Description of Bonds. The Series 2024 Bonds shall initially be issued in single form, No. R-1, fully registered to CNB Bank, Inc. and shall be dated as of the date of delivery. The Bond shall bear interest from that date, payable monthly with an interest rate not to exceed 6.0% per annum, with a final maturity date no later than December 31, 2040, the exact interest rate and term to be as set forth in the Series 2024 Bonds executed by the Mayor and shall

be sold at the par value thereof. The Bond shall be subject to prepayment, at the option of the Issuer, and shall be payable as provided in the bond form hereinafter set forth.

Section 3.03. Negotiability, Registration, Transfer and Exchange of Series 2024 Bonds. The Series 2024 Bonds shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but the Series 2024 Bonds, and the right to the principal of, and stated interest on, the Series 2024 Bonds, may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the applicable Series 2024 Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Registrar.

Whenever a Series 2024 Bond shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new bond or bonds in authorized denominations, for a like aggregate principal amount. The Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Registrar with respect to such transfer.

No registration of transfer of a Series 2024 Bond shall be permitted to be made after the 15th day next preceding any installment payment date on the Series 2024 Bonds.

Section 3.04. Registrar. CNB Bank, Inc. or other Registrar designated by the Issuer shall keep or cause to be kept at the office of the Registrar the Bond Register for the registration and transfer of the Series 2024 Bonds, and, upon presentation for such purpose, the Registrar shall register the Series 2024 Bond initially issued pursuant hereto and register the transfer, or cause to be registered, on such Bond Register, the transfer of the Series 2024 Bonds as hereinbefore provided.

Section 3.05. Execution of Bond. The Series 2024 Bonds shall be executed in the name of the Issuer by the Mayor and its corporate seal shall be affixed thereto and attested by the Recorder.

Section 3.06. Mutilated, Destroyed, Stolen or Lost Series 2024 Bond. In case a Series 2024 Bond shall become mutilated, destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new bond of like tenor as the Series 2024 Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Series 2024 Bond or in lieu of and substitution for the Series 2024 Bond destroyed, stolen or lost, and upon the holder of the Series 2024 Bond furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Series 2024 Bond so surrendered shall be canceled and held for the account of the Issuer. If the Series 2024 Bond shall have matured or be about to mature, instead of issuing a substitute Series 2024 Bond the Issuer may pay the same, and, if such bond be destroyed, stolen or lost, without surrender thereof.

Section 3.07. Series 2024 Bonds not to be Indebtedness of the Members of the Governing Body of the Issuer. The Series 2024 Bonds shall not be or constitute an indebtedness of the members of the Governing Body of the Issuer but shall be payable solely from the Gross Revenues and from funds in the Series 2024 Bonds Reserve Account.

Section 3.08. Bonds Secured by Pledge of Gross Revenues; Lien Positions with Respect to Prior Bonds. The payment of the debt service of all the Series 2024 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. Such Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2024 Bonds and the Prior Bonds and to make the payments into all funds and accounts either existing or hereinafter established are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2024 Bonds and Prior Bonds as the same become due. In addition to the foregoing, the unexpended proceeds of the Series 2024 Bonds are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2024 Bonds as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2024 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2024 Bonds to the Purchaser or other purchaser(s) of the Series 2024 Bonds set forth in the Supplemental Resolution or a Certificate of Determinations, upon receipt of the documents set forth below:

A. If other than the Purchaser, a list of the names in which the Series 2024 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2024 Bonds to the Purchaser;

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

D. The unqualified approving opinion of bond counsel on the Series 2024 Bonds.

Section 3.10. Form of Series 2024 Bonds. Subject to the provisions hereof, the text of the Series 2024 Bonds and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or by any ordinance or resolution enacted or adopted after the date of adoption hereof and prior to the issuance thereof:

[Form of Series 2024 Bonds]

**UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
TOWN OF HARPERS FERRY  
WATER REVENUE BOND  
SERIES 2024 (CNB BANK, INC.)**

No. R-1

[\$700,000]

THE TOWN OF HARPERS FERRY, a municipal corporation and political subdivision of the State of West Virginia in Jefferson County of said State (the “Issuer”), for value received, promises to pay to the order of CNB Bank, Inc. (the “Purchaser”), or its registered assigns, at 101 S. Washington Street, Berkeley Springs, West Virginia 25411, or at such other place as the Purchaser may hereafter designate in writing, the principal sum of [SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00)] or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, plus interest on the unpaid principal balance at the rate of \_\_\_\_% per annum. Interest only on the principal amount outstanding shall be due and payable by the Issuer directly to Purchaser on the first day of each month commencing \_\_\_\_\_ 1, 2024 to and including \_\_\_\_\_ 1, 2025. Thereafter, the Issuer shall pay monthly installments of principal and interest in the amount of \$\_\_\_\_\_ as set forth in the Debt Service Schedule attached hereto as Exhibit A, commencing on \_\_\_\_\_ 1, 2025, and thereafter on said corresponding day of each month, except that the final installment shall be paid on \_\_\_\_\_ 1, 2040, on which date all unpaid principal of and interest on the Bonds shall be due and payable. The foregoing monthly installments of principal and interest shall be paid by the Issuer to the West Virginia Municipal Bond Commission, as the Paying Agent for the Bonds, one month in advance of the due date therefor, which Paying Agent shall, in turn, pay such monthly installments of principal and interest to the Purchaser or registered assigns. Accordingly, the first payment of principal and interest shall be paid by the Issuer to the West Virginia Municipal Bond Commission, as the Paying Agent for the Bonds on \_\_\_\_\_ 1, 2025, in an amount equal to the installment of principal and interest due on \_\_\_\_\_ 1, 2025. If \$700,000 in principal amount of this Bond has not been disbursed for the project or into the Series 2024 Bonds Construction Trust Fund referenced in the Bond Legislation, as hereinafter defined, as of \_\_\_\_\_ 2, 2025, the monthly installments of principal and interest shall not be reduced but shall result in the early payment of this Bond. Every payment made hereon shall be applied first to interest computed to the effective date of the payment and then to principal.

Notwithstanding the foregoing, in the event of a Determination of Taxability, as hereinafter defined, the interest rate hereon shall be equal to the Taxable Rate, as hereinafter defined, commencing from the effective date of such Determination of Taxability. For purposes of the immediately preceding sentence, the following terms shall have the following meanings:

“Determination of Taxability” means a determination that all or any portion of the interest income on this Bond is not excludable from the gross income under Section 103 of the Code (“exempt interest”) of a holder or former holder of this Bond. The determination shall be deemed to have been made upon the occurrence of the first to occur of the following: (a) the date

on which the registered owner of this Bond is notified that Bond Counsel is unable to deliver an opinion that interest on this Bond is excludable from gross income for federal income tax purposes; (b) the date on which any change in law or regulation becomes effective or on which the Internal Revenue Service (the “IRS”) issues any private ruling, technical advice or any other written communication with or to the effect that the interest income on this Bond does not qualify as exempt interest; or (c) the date on which the Issuer shall receive notice from the Purchaser in writing that the Purchaser has been notified by the Internal Revenue Service, or has been advised by any registered owner or former registered owner of this Bond that the Internal Revenue Service has issued a thirty-day letter or other notice which asserts that the interest on this Bond does not qualify as exempt interest.

“Taxable Rate” means \_\_\_\_\_% per annum.

[INTEREST CALCULATION METHOD. Interest on this Bond will be computed on a 360/365 basis. All interest payable under the Bond will be computed using this method.]

Notwithstanding any provision of this Bond to the contrary, this Bond shall evidence only the indebtedness reflected as outstanding on the Record of Advances and Payments attached hereto as Exhibit B. Interest shall accrue only on the amount of each advance from its actual date as listed on such Record of Advances and Payments and shall cease to accrue on the amount outstanding, or portions thereof, as the same is paid as noted on such Record of Advances and Payments. Advances and payments shall be noted by the Purchaser hereof on the Record of Advances and Payments attached hereto as the same are made, and such Record of Advances and Payments or other record maintained by the Purchaser as to the outstanding principal of this Bond shall be determinative as to such matters absent manifest error.

The principal and interest installments on this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the “Paying Agent”). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of CNB Bank, Inc., 101 S. Washington Street, Berkeley Springs, West Virginia 25411, as the Registrar (as defined in the hereinafter described Bond Legislation) on the 15<sup>th</sup> day of the month next preceding a payment date, or by such other method as shall be mutually agreeable so long as the Purchaser is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part on any date at a redemption price equal to the outstanding principal amount thereof, without premium or other penalty, plus any unpaid interest accrued to the date of redemption.

This Bond is issued (i) to finance costs of additions, betterments and improvements to the waterworks system of the Issuer, including without limitation upgrades and replacement of water lines and/or water meters and related facilities (the “Project”); and (ii) to pay certain costs of issuance hereof and related costs. The existing water facilities of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the “System.” This Bond is issued under the authority of and in full compliance with the

Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the “Act”), and a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2024, and put into effect passed on final reading following a public hearing held on \_\_\_\_\_, 2024, as supplemented and amended by a Supplemental Resolution adopted on \_\_\_\_\_, 2024 (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 securities provided for the Bonds of this Series (the “Bonds”) under the Bond Legislation.

THE BONDS ARE ON A PARITY AS TO LIENS, PLEDGE, SOURCE OF AND SECURITY FOR PAYMENT WITH THE ISSUER’S WATER REVENUE BONDS, SERIES 1986 A, DATED DECEMBER 19, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$611,912 (THE “SERIES 1986 A BONDS”); WATER REVENUE BONDS, SERIES 2008 (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 13, 2008, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$350,000 (THE “SERIES 2008 BONDS”); AND WATER REVENUE BONDS, SERIES 2021 (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 11, 2021, ISSUED IN THE ORIGINAL PRINCIPAL AMOUNT OF \$6,300,000 (THE “SERIES 2021 BONDS” AND TOGETHER WITH THE SERIES 1986A BONDS, AND THE SERIES 2008 BONDS, THE “PRIOR BONDS”) (COLLECTIVELY, THE “PRIOR BONDS”).

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the “Series 2024 Bonds Reserve Account”), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all Bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 2024 Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, for each fiscal year beginning on and after July 1, 2024, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each fiscal year equal to at least 110% of the maximum amount payable in any fiscal year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Prior Bonds. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of CNB Bank, Inc., 101 S. Washington Street, Berkeley Springs, West Virginia 25411 as registrar (the “Registrar”) by the registered

owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

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

This Bond is, under the Act, exempt from taxation by the State of West Virginia, and the other taxing bodies of the State.

This Bond has been designated a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

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

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

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

IN WITNESS WHEREOF, the TOWN OF HARPERS FERRY has caused this Series 2024 Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder and has caused this Series 2024 Bond to be dated \_\_\_\_\_, 2024.

TOWN OF HARPERS FERRY

[CORPORATE SEAL]

Attest:

\_\_\_\_\_  
Recorder

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



**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Bond is one of the Series 2024 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: \_\_\_\_\_, 2024.

CNB BANK, INC., as Registrar

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

**EXHIBIT A**  
**DEBT SERVICE SCHEDULE**

**EXHIBIT B**  
**RECORD OF ADVANCES AND PAYMENTS**  
**ADVANCES**

<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>
(1) \$	_____, 2024	(7) \$	
(2) \$		(8) \$	
(3) \$		(9) \$	
(4) \$		(10) \$	
(5) \$		(11) \$	
(6) \$		(12) \$	

## RECORD OF ADVANCES AND PAYMENTS

### PRINCIPAL PAYMENTS

Date

Amount

Initialed by (Holder Officer)

**ASSIGNMENT**

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

\_\_\_\_\_

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

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.11. Sale of Series 2024 Bonds. The Series 2024 Bonds shall be sold to the Purchaser, pursuant to the terms and conditions of the commitment letter with Purchaser.

Section 3.12. Designation of Bonds as “Qualified Tax-Exempt Obligations”. The Issuer hereby designates the Series 2024 Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b)(3)(B) of the Code and covenants that the Series 2024 Bonds do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income tax purposes (excluding, however, obligations described in Section 265(b)(3)(C)(ii) of the Code), including the Series 2024 Bonds, have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 2024.

**ARTICLE IV**

**[RESERVED]**

**ARTICLE V**  
**FUNDS AND ACCOUNTS; SYSTEM REVENUES AND**  
**APPLICATION THEREOF**

Section 5.01. Establishment or Continuance of Funds and Accounts with Depository Bank. The following special funds or accounts are created (or continued if previously established) 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 from each other:

- A. Revenue Fund
- B. Renewal and Replacement Fund;
- C. Series 2024 Bonds Construction Trust Fund; and
- D. Rebate Fund (if needed).

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

- A. Series 1986A Bonds Sinking Fund (created or continued by the Prior Ordinances);
- B. Within the Series 1986A Bonds Sinking Fund, the Series 1986A Bonds Reserve Account (created or continued by the Prior Ordinances);
- C. The Series 2008 Bonds Reserve Account (created or continued by the Prior Ordinances);
- D. The Series 2021 Bonds Reserve Account (created or continued by the Prior Ordinances);
- E. Series 2024 Bonds Sinking Fund; and
- F. Within the Series 2024 Bonds Sinking Fund, the Series 2024 Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. So long as any of the Bonds shall be Outstanding and unpaid, the Issuer covenants as follows:

- A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in



the manner herein provided. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priorities:

- (1) The Issuer shall, on the first day of each month, pay from the Revenue Fund (i) the amounts required to be paid with respect to the interest on the Prior Bonds in the manner required by the respective Prior Bonds, and (ii) on such dates as to be set forth in the Supplemental Resolution, directly to the Purchaser the interest due to the Purchaser on such date on the Series 2024 Bonds and commencing on the first day of the month to be set forth in the Supplemental Resolution, to the Commission for deposit in the Series 2024 Bonds Sinking Fund a sum equal to the amount of interest which will be due and payable on the Series 2024 Bonds on the first day of the following month.
- (2) The Issuer shall next, on the first day of each month, pay from the Revenue Fund (i) the amounts required to be paid with respect to the principal of the Prior Bonds in the manner required by the respective Prior Bonds, and (ii) commencing on the first day of the month to be set forth in the Supplemental Resolution, to the Commission for deposit in the Series 2024 Bonds Sinking Fund a sum equal to the amount of principal which will be due and payable on the Series 2024 Bonds on the first day of the following month, provided, that the amount of such deposits with respect to the Series 2024 Bonds shall be reduced by the amount of any earnings credited to the Series 2024 Bonds Sinking Fund and not previously applied to reduce such deposits in accordance with the Commission's practices and procedures.

Moneys in the Series 2024 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2024 Bonds as the same shall become due, whether by maturity or redemption prior to maturity. Pending such use, such moneys shall be invested in accordance with Article VIII.

The Issuer shall not be required to make any further payments into the Series 2024 Bonds Sinking Fund when the aggregate amount of funds in the Series 2024 Bonds Sinking Fund, including the Series 2024 Bonds Reserve Account therein, is at least equal to the aggregate principal amount of Series 2024 Bonds issued pursuant to this Ordinance then Outstanding, plus the amount of interest due or thereafter to become due on the Series 2024 Bonds then Outstanding.

The payments into the Series 2024 Bonds Sinking Fund shall be made on the first day of each month, except that, when the first day of any month shall be a Saturday, Sunday or legal holiday, then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Bond Commission with appropriate instructions as

to the custody, use and application thereof consistent with the provisions of this Ordinance.

- (3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission (i) the amounts required to be transferred to the Commission with respect to debt service reserve requirements of the Prior Bonds, and (ii) commencing on the first day of the month to be set forth in the Supplemental Resolution, for deposit into the Series 2024 Bonds Reserve Account an amount equal to 1/120th of the Series 2024 Bonds Reserve Requirement, until the amount in the Series 2024 Bonds Reserve Account equals the Series 2024 Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 2024 Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2024 Bonds Reserve Requirement.

Amounts in the Series 2024 Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 2024 Bonds when due when amounts in the Series 2024 Bonds Sinking Fund are insufficient therefor, for prepayment of installments on the Series 2024 Bonds or for mandatory prepayment of the Series 2024 Bonds to the extent required, and for no other purpose.

All investment earnings on moneys in the Series 2024 Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited in the Series 2024 Bonds Construction Trust Fund until such time as the Project is completed and thereafter shall be deposited in the Revenue Fund and applied in full, first to the next ensuing installment(s) of principal and interest due on the Series 2024 Bonds.

Any withdrawals from the Series 2024 Bonds Reserve Account which result in a reduction in the balance of the Series 2024 Bonds Reserve Account to below the then applicable requirement therefor shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the priority set forth above.

As and when additional Bonds ranking on a parity with the Series 2024 Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional Parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve account in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2024 Bonds Reserve Account when the aggregate amount of funds therein is at least equal to the lesser of (i) Series 2024 Bonds

Reserve Requirement or (ii) the aggregate principal amount of the Series 2024 Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

- (4) The Issuer shall first each month transfer from the Revenue Fund and pay all current Operating Expenses of the System.
- (5) The Issuer shall next, on the first day of each month, from the moneys remaining in the Revenue Fund, transfer from the Revenue Fund and deposit into the Renewal and Replacement Fund a sum equal to 2 1/2 % of the Gross Revenues of the immediately preceding month (as previously set forth in one or more of the Prior Ordinances and not in addition thereto), less any amount transferred to any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in Qualified Investments. Moneys in the Renewal and Replacement Fund shall be used first to make up deficiencies for monthly payments of the principal of and interest on the Prior Bonds and/or the Series 2024 Bonds as the same become due, and next to restore to the Reserve Accounts any sum or sums transferred therefrom, and provided that in the event there are not sufficient moneys in the Renewal and Replacement Fund to make the transfer required by this sentence, such transfers shall be made on a pro rata basis. Thereafter, and provided that payments into the Reserve Accounts are current and in accordance with the foregoing provisions, withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System.

Principal, premium, if any, and interest payments, and any payments made for the purpose of funding any reserve account, whether for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Bonds in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2024 Bonds Sinking Fund and the Series 2024 Bonds Reserve Account created hereunder and all amounts required for said account shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Purchaser at any time, the Issuer shall make the necessary arrangements whereby required payments into said account shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

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

C. The Issuer shall remit from the Revenue Fund to the Commission, the Paying Agent or the Depository Bank, on such dates as the Commission, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay any charges and fees then due.

D. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund, the Renewal and Replacement Fund, the Series 2024 Bonds Construction Trust Fund and the Rebate Fund (if needed) 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.

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

F. The Issuer shall on the first day of each month (if the first day is not a business day, then the next succeeding business day of each month), make the deposits with the Commission required by this Section 5.03 and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. All remittances made by the Issuer to the Commission and the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

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

H. All Tap Fees shall be deposited by the Issuer, as received, in the Revenue Fund and may be used for any lawful purpose of the System.

## **ARTICLE VI**

### **BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS**

Section 6.01. Advance and Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. The proceeds of the Series 2024 Bonds shall be advanced from time to time by the Purchaser into the Series 2024 Bonds Construction Trust Fund for the payment of costs of the Project, including without limitation costs of issuing the Series 2024 Bonds, upon receipt by the Purchaser from the Issuer of such requisitions and other documentation as the Purchaser may request. The Issuer shall thereafter disburse from time to time such proceeds deposited into the Series 2024 Bonds Construction Trust Fund promptly after such proceeds are deposited therein for the payment of such costs of the Project, including without limitation costs of issuing the Series 2024 Bonds. Until the proceeds of the Series 2024 Bonds are disbursed by the Issuer from

the Series 2024 Bonds Construction Trust Fund , such proceeds are hereby pledged as additional security for the Series 2024 Bonds. If all of the proceeds of the Series 2024 Bonds have not been advanced by the date to be set forth in the Supplemental Resolution, upon the request of the Issuer, the remaining proceeds of the Series 2024 Bonds or portion thereof shall be advanced and deposited into the Series 2024 Bonds Construction Trust Fund and such remaining proceeds of the Series 2024 Bonds so deposited into the Series 2024 Bonds Construction Trust Fund shall thereafter be disbursed by the Issuer to pay costs of the Project, including without limitation costs related to the issuance of the Bonds.

## **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 2024 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 2024 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 said Series 2024 Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2024 Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation of indebtedness but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Series 2024 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay said Series 2024 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues; Lien Positions with Respect to Prior Bonds. The payment of the debt service of all the Series 2024 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. Such Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2024 Bonds and the Prior Bonds and to make the payments into all funds and accounts either existing or hereinafter established are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2024 Bonds and Prior Bonds as the same become due. In addition to the foregoing, the unexpended proceeds of the Series 2024 Bonds are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2024 Bonds as the same become due.

Section 7.04. Initial Schedule of Rates and Charges. Prior to the issuance of the Series 2024 Bonds, the Issuer shall establish a schedule of rates and charges that (i) meets the requirements of the Prior Bonds Ordinances to have the Series 2024 Bonds issued on a parity with the Prior Bonds, and (ii) meets the requirements of Section 7.09 hereof, and shall obtain any and all approvals of such rates and charges required by State law and have taken any other action required to establish and impose such rates and charges with all requisite appeal periods having

expired without successful appeal. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the Ordinance enacted by the Issuer on April 12, 2024, and are hereby ratified, and which rates are incorporated herein by reference as a part hereof.

So long as any of the Series 2024 Bonds are Outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation. In the event the schedule of rates and charges initially established for the System in connection with the Series 2024 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation, the Issuer hereby covenants and agrees that it will, to the extent and in the manner authorized by law, promptly adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation.

Section 7.05. Sale of the System. So long as any of the Prior Bonds are Outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of the System, or any part thereof, except as provided in the applicable Prior Ordinances. Additionally, so long as the Series 2024 Bonds are outstanding and except as otherwise required by law, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Prior Bonds and Series 2024 Bonds that are Outstanding. The proceeds from any such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the Series 1986A Bonds Sinking Fund and the Series 2024 Bonds Sinking Fund and disbursed directly to the holder of the Series 2008 Bonds and Series 2021 Bonds , respectively, pro rata, with respect to the principal amount of each of the Prior Bonds and the Series 2024 Bonds then Outstanding, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder of any of the Prior Bonds, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest on the Series 2024 Bonds and Prior Bonds in such manner. Any balance remaining after the payment of the Series 2024 Bonds and any other Bonds Outstanding and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$250,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$250,000 but not in excess of \$1,000,000, the Issuer shall first, determine upon consultation with the

Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$250,000 and not in excess of \$1,000,000, shall be deposited in the Renewal and Replacement Fund. Such payment of such proceeds into the Renewal or Replacement Fund shall not reduce the amounts required to be paid into said Renewal and Replacement Fund by other provisions of this Ordinance. 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 \$1,000,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 50% in principal amount of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 7.06 and in Section 7.07, the Issuer shall not issue any obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2024 Bonds. All obligations issued by the Issuer after the issuance of the Series 2024 Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on, pledge and source of and security for payment from such revenues and in all other respects, to the Series 2024 Bonds.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2024 Bonds, and the interest thereon, if any, upon any or all of the income and revenues of the System pledged for payment of the Series 2024 Bonds and the interest thereon, in this Ordinance, or upon the System or any part thereof.

Section 7.07. Additional Parity Bonds. So long as any of the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the respective Prior Ordinances shall be applicable. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2024 Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2024 Bonds.

No such Parity Bonds shall be issued except for the purposes of financing the costs of the design, acquisition and/or construction of extensions, additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds or Prior Bonds, or to pay claims which may exist against the revenues or facilities of the System or all or any combination of such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Recorder a written statement by the Independent Accountants reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 110% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

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

The “estimated average increased annual Net Revenues to be received in each of the 3 succeeding years,” as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds, if any, and (b) any increase in rates adopted by the Issuer and approved in the manner required by then applicable law, the period for appeal of which has expired (without successful appeal) prior to the date of delivery of such additional Parity Bonds, whether or not such approved rates are being charged and collected by the Issuer.

The Net Revenues actually derived from the System during the 12-consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Accountants on account of increased rates, rentals, fees and charges for the System adopted by the Issuer and approved in the manner required by then applicable law, the period for appeal of which has expired (without successful appeal) prior to issuance of such Parity Bonds, whether or not such approved rates are being charged and collected by the Issuer.

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

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on revenues of the System is subject to the



prior and superior liens of the Series 2024 Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2024 Bonds.

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

Notwithstanding the foregoing, the Issuer may issue Parity Bonds without compliance with any other conditions of this Bond Legislation for the purpose of refunding prior to maturity any issues or series of the Bonds, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the costs of acquiring the Project site, if any, and acquiring, constructing, equipping and installing the Project. The Issuer shall permit the Purchaser, or its 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 Purchaser such documents and information as the Purchaser may reasonably require in connection with the acquisition, construction, equipping and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Purchaser, or its agents and representatives, to inspect all records pertaining to the Project and the operation and maintenance of the System at any reasonable time .

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

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

The Issuer shall file with the Purchaser, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of Bonds requesting the same, an annual report within 30 days following the date of receipt by thereof by the Issuer containing the following:

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

B. A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation with respect to said Bonds and the status of all said funds and accounts.

C. The amount of any Bonds or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Accountants in compliance with the applicable OMB Circular and the Single Audit Act or successor thereto in effect at the time, to the extent required, and shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to the Purchaser or any other original purchaser of the Bonds.

Section 7.09. Rates. Prior to the issuance of the Series 2024 Bonds, equitable rates or charges for the use of and service rendered by the System shall be established that meet the requirements of this Section 7.09 all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect for each Fiscal Year beginning on and after July 1, 2024, shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 110% of the maximum amount required in any Fiscal Year for payment of principal of and interest on the Series 2024 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2024 Bonds, including the Prior Bonds.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. The Issuer, by a resolution duly adopted by the Governing Body, may from time to time amend the budget during the subject Fiscal Year provided that the budget remains balanced after such amendment. After the adoption of any such amendment, the budget, as amended, shall be the budget of the Issuer for the balance of the subject Fiscal Year. No expenditures for the operation and maintenance of the

System shall be made in any Fiscal Year in excess of the amounts provided therefor in the budget until the Issuer shall have approved such increased expenditures by a resolution duly adopted. The Issuer shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Purchaser and to any Bondholder or anyone acting for and in behalf of such Bondholder who shall file his or her address with the Issuer and request in writing that copies of all such budgets, any amendments thereto and resolutions be furnished him or her and shall make available such budgets, any amendments thereto and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Section 7.11. Engineering Services and Operating Personnel. The Issuer shall provide and maintain competent and adequate engineering services reasonably satisfactory to the Purchaser covering the supervision and inspection of the development and construction of the Project. The Issuer shall also employ qualified operating personnel properly certified by the State to operate the System so long as the Series 2024 Bonds are Outstanding.

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

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

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

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer

or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. The Issuer hereby covenants and agrees that so long as any of the Series 2024 Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

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

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

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

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

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

(6) FIDELITY BONDS, will be provided for every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

Section 7.16. Completion and Operation of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer has obtained all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Series 2024 Bonds required by state law, with all requisite appeal periods having expired without successful appeal.

Section 7.17. Compliance With Law. The Issuer shall perform, satisfy and comply with all terms and conditions of the Act and all other applicable laws, rules and regulations issued by State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.18. Contracts. The Issuer has or shall, simultaneously with the delivery of the Series 2024 Bonds or within thirty days thereafter, enter into written contracts for the acquisition, construction and equipping of the Project.

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2024 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2024 Bonds during the term thereof is, under the terms of the Series 2024 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2024 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2024 Bonds during the term thereof is, under the terms of the Series 2024 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5 % of Net Proceeds of the Series 2024 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the System, or if the Series 2024 Bonds are for the purpose of financing more than one

project, a portion of the System, and shall not exceed the proceeds used for the governmental use of that portion of the System to which such Private Business Use is related.

B. **PRIVATE LOAN LIMITATION.** The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 2024 Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. **FEDERAL GUARANTEE PROHIBITION.** The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2024 Bonds to be directly or indirectly “federally guaranteed” within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. **INFORMATION RETURN.** The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2024 Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. **FURTHER ACTIONS.** The Issuer will take all actions that may be required of it so that the interest on the Series 2024 Bonds will be and remain excludable from gross income for federal income tax purposes and will not take any actions which would adversely affect such exclusion.

## **ARTICLE VIII**

### **INVESTMENT OF FUNDS**

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

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

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

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year during which the respective banks hold any such funds, accounts or investments (or more often if reasonably requested by the Issuer), a summary of such funds, accounts, and investment earnings.

Section 8.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Series 2024 Bonds in such manner and to such extent as may be necessary, so that the Series 2024 Bonds will not constitute “arbitrage bonds” under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2024 Bonds) so that the interest on the Series 2024 Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Tax Certificate and Rebate. A. The Issuer shall deliver a tax certificate or other similar document relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 2024 Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 2024 Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

B. Unless excepted therefrom, the Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect, with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefore. The Issuer at its expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the

Issuer may deem appropriate in order to assure compliance with this Section 8.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 8.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and the required amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Series 2024 Bonds from gross income for federal income tax purposes.

C. In order to establish that the Series 2024 Bonds qualify for the exception from the arbitrage rebate requirements of Section 148(f) of the Code provided for in Section 148(f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that no part of the Bonds are private activity bonds; that 95% or more of the Net Proceeds of the Series 2024 Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds), including without limitation the Series 2024 Bonds, issued by the Issuer during the 2024 calendar year in which the Bonds are issued, does not and will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations from time to time in effect and applicable to the Series 2024 Bonds. For purposes of this paragraph and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

## **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 2024 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on any of the Series 2024 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 2024 Bonds, set forth in this Bond Legislation, any supplemental resolution or in the Series 2024 Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Purchaser, the Commission, the Depository Bank or any other Paying Agent or other Holder of a Series 2024 Bond; or



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

(4) If default occurs with respect to any of the Prior Bonds or any of the ordinances authorizing the issuance of the Prior Bonds.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Bondholder may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Holders of the Bonds, including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Holders of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of this Bond Legislation or the rights of such Bondholders; provided that all rights and remedies of the Holders of the Series 2024 Bonds shall be on a parity with the Holders of the Prior Bonds.

No remedy by the terms of this Ordinance conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Bondholders hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Bondholders shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

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

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

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

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

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

Section 9.04. Restoration of Issuer and Bondholder. In case any Bondholder shall have proceeded to enforce any right under this Ordinance by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and such Bondholder shall be restored to their former positions and rights hereunder, and all rights and remedies of such Bondholder shall continue as if no such proceedings had been taken.

## **ARTICLE X**

### **PAYMENT OF BONDS**

Section 10.01. Payment of Series 2024 Bonds. If the Issuer shall pay or there shall otherwise be paid, to the respective Holders of all Series 2024 Bonds, the principal of and

interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 2024 Bonds only, the pledge of Gross Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Holders of the Series 2024 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to the issuance of the Series 2024 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2024 Bonds, no material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of the Holders of the Series 2024 Bonds shall be made without the consent in writing of the Holders of a majority of the principal of the Series 2024 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Series 2024 Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Holder thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Holders of the Series 2024 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 Bond Legislation should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, any Supplemental Resolution, or the Series 2024 Bonds.

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

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

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the enactment of this Ordinance do exist, have happened, have been

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

Section 11.07. Statutory Notice and Public Hearing. Upon enactment hereof, an abstract of this Ordinance, substantially in the form attached hereto as Exhibit B, which is determined by the Issuer to contain sufficient information as to give notice of the contents hereof, shall be published once a week for 2 successive weeks within a period of 14 consecutive days, with at least 6 full days intervening between each publication, in a qualified newspaper published and of general circulation in the Town of Harpers Ferry, together with the notice set forth therein stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2024 Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than 10 days subsequent to the date of the first publication of the said abstract and notice, and present protests, and that a certified copy of the Ordinance is on file in the office of the Town Clerk for review by interested parties during the office hours of the Town Clerk.

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

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

Passed on First Reading	May 13, 2024
Passed on Second Reading	_____, 2024
Passed on Final Reading and Effective following public hearing held on	_____, 2024

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Recorder

## **EXHIBIT A**

### **DESCRIPTION OF PROJECT**

Design, acquisition, construction and equipping of additions, betterments and improvements to the waterworks system of the Town of Harpers Ferry including without limitation the upgrade and replacement of the water lines and/or water meters and related facilities.

## **EXHIBIT B**

### **NOTICE OF PUBLIC HEARING**

#### **TOWN OF HARPERS FERRY NOTICE OF PUBLIC HEARING ON WATER BOND ORDINANCE**

A public hearing will be held on the following entitled Ordinance at a [regular/special]meeting of the Council of the Town of Harpers Ferry to be held on \_\_\_\_\_, \_\_\_\_\_, 2024, at [\_\_\_\_\_ p.m.], in the Council Chambers at the Harpers Ferry Town Hall, 1000 Washington Street, Harpers Ferry, West Virginia, and at such hearing any person interested may appear before the Council and present protests, all objections and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATERWORKS SYSTEM OF THE TOWN OF HARPERS FERRY, INCLUDING WITHOUT LIMITATION THE UPGRADE AND REPLACEMENT OF WATER LINES AND/OR WATER METERS, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF HARPERS FERRY OF WATER REVENUE BONDS, SERIES 2024, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00); DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE SERIES 2024 BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITIES FOR THE HOLDERS OF THE SERIES 2024 BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT.

The above-entitled Ordinance was enacted by the Council of the Town of Harpers Ferry on \_\_\_\_\_, 2024.

The above quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bond issue contemplated thereby. The Town of Harpers Ferry contemplates the issuance of the Bonds described in said Ordinance. The proceeds of the Bonds will be used to provide permanent financing the costs of the design, acquisition, construction and equipping of certain additions, betterments and improvements to the waterworks system for the

Town of Harpers Ferry including, the upgrade and replacement of water lines and/or water meters and related facilities. The Bonds are payable solely from revenues derived from the ownership and operation of the waterworks system of the Town of Harpers Ferry. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

A certified copy of the above-entitled Ordinance is on file at the office of the [Financial Officer] of the Town of Harpers Ferry in the Harpers Ferry Town Hall, 1000 Washington Street, Harpers Ferry, West Virginia, for review by interested parties during regular office hours.

Following the said public hearing, the Council intends to enact said Ordinance on final reading and put said Ordinance into effect.

Dated: \_\_\_\_\_, 2024.

/s/Nina Armstrong, Recorder

**CERTIFICATION**

Certified a true copy of an Ordinance duly enacted by the Town Council of the  
TOWN OF HARPERS FERRY on the \_\_\_\_ day of \_\_\_\_\_ 2024 and passed on third and  
final reading and put into effect following a public hearing held on \_\_\_\_\_, 2024.

Dated: \_\_\_\_\_, 2024.

\_\_\_\_\_  
Recorder

[SEAL]



Attachment  
Item 5 C.I.

# MAY 2024 POLICE REPORT

**ACCIDENTS**                **0**

**CALL OUTS**                **3**

**ASSISTS**                **6**

**CITATIONS**                **235**

Insurance	1
MVI	5
Parking	220
Possession	1
Registration	6
Speeding	2

**INCIDENTS**                **220**

Assist Other Departments	6
Building Check	15
Citizen Assist	1
Directed Patrol	68
Disabled Vehicle	1
Drug Activity	1
Foot Patrol	12
Found Property	1
Indecent Activity	1
Motorist Assist	1
Noise Complaint	1
Out of Car	2
Parking	40
Public Service	5
Road Patrol	43
Special Event	1
Traffic Hazard	3
Traffic Stop	15
Transport	1
Welfare Check	1
Wildlife Complaint	1



# CORPORATION OF HARPERS FERRY

## Ordinance Compliance Officer

### Town Council Monthly Report

Town Hall • 1000 Washington Street, P.O. Box 217, Harpers Ferry, West Virginia 25425

PH: (304) 535-2206

*Attachment  
Item 5 d. i.*

TC Meeting Date: 6/10/24

Report on activities for the Month of May 2024

#### Permit Applications received for the month of May:

Date Received	Applicant Name and Project Site Address	Type of Application	Action Taken (sent to BZA, LM, PC, Legal, TC)	Application in Progress	Date Permit Issued
5/20/24	R. Slepoy 388 Washington St.	ZCPA #2024-0016 – Install patio in front of home.	Issued a stop work order on this project. Homeowner then submitted permit; permit will require BZA approval for a variance as the patio does not meet the setbacks.	Yes	
5/28/24	A. Sabar 180 High St.	Sign Permit	Application incomplete. Waiting for drawing and specs.	Yes	

#### Updates for the month of May on open applications:

Date Received	Applicant Name and Project Site Address	Type of Application	Action Taken (sent to BZA, LM, PC, Legal, TC)	Application in Progress	Date Approved
4/10/24	Alexandria Stephens 1128 W. Ridge Street	ZCPA #2024-0014 – Roof Replacement	<b>May Update:</b> Approved use of materials for roof as they are allowed per appendix A. April: Application was referred to Landmarks on 4/11/24 as the material will not be like for like; requesting approval for a substitute slate material. HLC will place the request on their 5/15/24 agenda.	Yes	
4/18/24	S. Succar Block MM, Lot 3, Fillmore Street	ZCPA #2024-0015 – New Home Construction	<b>May Update:</b> Landmarks will review the plans at their special meeting scheduled for 6/5/24. April: Applicant sent a preliminary plan for review. I have sent back many comments and waiting for their response.	Yes	
2/7/24	Paramount Rentals T. Sanderson Fillmore St. Block JJ, Lots 5&8 4&9	ZCPA #2024-00006 – Lot line adjustments; Install a driveway between 2 lots.	May Update: No objections at public hearing. This request was granted. Applicant filed necessary documents at County Level. April Update: Public Hearing is scheduled for May 10 <sup>th</sup> at 7 pm. Will then be heard by TC on 5/13/24.	File Closed	5/21/24

1/23/24	M. Zeleke 828 Washington St.	ZCPA #2024-0002 Installation of driveway	<p><b>May Update:</b> Continue working with applicant to close this project out.</p> <p><b>April Update:</b> Applicant working with DOH regarding driveway apron. Waiting for DOH remarks.</p> <p><b>March:</b> Provided applicant the State contact information for a driveway cut into the road. PC is waiting for State approval.</p> <p><b>Feb:</b> Landmarks approved the driveway as shown on the application pending Planning Commission's approval to utilize the Town's right-of-way. Waiting for Planning to review.</p> <p><b>Jan:</b> This application has been referred to Landmarks and to Planning for review.</p>	Yes	
8/29/23	B. Zampino Old Furnace Road	Sign Permit – Pine Grove Cemetery	<p><b>May Update:</b> Sign has not been installed.</p> <p><b>April Update:</b> Sign has not been installed yet.</p> <p><b>March:</b> Sign has not been installed yet.</p> <p><b>Feb:</b> Project in progress; almost completed.</p> <p><b>Jan:</b> Project in progress.</p>	Yes	
3/23/23	Janis Thompson on behalf of the Weaver Family, Boundary Street	Demo Permit #2023-0006	<p><b>May Update:</b> Landmarks is working with the Town regarding the execution of the grant as request at the BZA Hearing on May 9, 2023.</p> <p><b>April Update:</b> Landmarks was notified of a grant approval from SHPO for a structure assessment. HLC working with Town Attorney regarding the acceptance. (May 2023: BZA held a hearing on May 9<sup>th</sup>. Demo was approved provided the applicant met the following conditions:</p> <ol style="list-style-type: none"> <li>1. Submission of a historic structure report with sufficient detail to reconstruct, which has been reviewed by the Historic Landmarks Commission for completeness.</li> <li>2. Submission of a letter of consent to demolish the structure signed by all owners of the property.)</li> </ol>	Yes	

**Other Information to report during the month of May 2024:**

Continue working with residents on 1109 Ordinance.

5/1/24 Performed footer inspection ZCPA #2024-0003 Fillmore Street (Smith)

5/1/24 Reviewed encroachment on Franklin paper street. Determined neighbors moved earth 27 feet onto the paper street and removed all trees in the area. Per discussion with homeowners, they will plant 2 mature trees to replace what was taken down. I confirmed with the Tree Commission the type of trees to be planted and they approved. Homeowners agreed to regrade the area and pull back the berm to their lot line.

5/1/24 Contacted out of state owners of 971 Putnam Street regarding grass in need of mowing.

5/1/24 Contacted out of state owners of 897 Fillmore Street regarding grass in need of moving.

5/8/24 Discussed the Merchant's signs in lower town with the Mayor.

5/8/24 Spoke with Mary Fisher regarding the removal of the playhouse that has been built on Van Wert paper street behind her home on Putnam Street. She has hired a contractor to relocate the structure on her property. This is scheduled to be moved during the first week of July.

5/14/24 Refunded inspection fee for ZCPA #2024-006 as no inspection fees are required per the type of application.

5/21/24 Contacted A. Myers owner of church on W Ridge Street regarding the poor condition of the structure.

5/29/24 Performed final inspection of fence installation at 730 Fillmore Street.

5/29/24 Looked into noise complaints on Fillmore Street regarding work being done at 710 Fillmore Street.

Submitted by: Kevin Hamilton

Kevin Hamilton, OCO

Rev 3-6-19





## CORPORATION OF HARPERS FERRY

### Ordinance Review Committee

REPORT # 07

ISSUED: 06-10-2024

#### 1. New Administration Transition Report.

- The Chair is continuing to assemble current and historical records of ORC from website, office files and previous member's databases. A more detailed report of what we may be able to assemble will be given to the Town Council when ready.

#### 2. Unfinished Business.

- a. Codified Ordinances Part Seven, Article 735, Section 735.39-Temporary Special Event Vendor License. ORC will be working on proposed ordinance changes, and possible policy changes. This work is in progress.
- b. ORC received a request to review definition, rules, and regulations for short-term rentals. And review due to updated regulations for short-term rentals. A definition has been agreed upon. July Meeting anticipating preparing ordinance for 1<sup>st</sup> reading.
- c. BZA has requested ORC to clarify and develop a definition for "Permanent Structure" vs. "Non-Permanent Structure." ORC and BZA have completed their work. Result is an ordinance text amendment change. Adoption of definition at second reading will complete this task.
  - ORC Recommends to Town Council DISCUSSION AND ACTION REGARDING PRESENTATION FOR 2nd READING ORD# 2024-02 – Text amendment for PART THIRTEEN, ARTICLE 1302, Definition of "Structure."
- d. Review of Codified Ordinances regarding selection, nomination, and appointments of all members to Town Commissions and Committees – Articles 131, 133, 134, 135, 140, 901, 1104. This work is ongoing.
- e. Town Council referred review of Harpers Ferry Code of Ordinances, Article 130. Mayor Vaughn presented text changes to consider at ORC's February 26<sup>th</sup> meeting. Work is progressing.

#### 3. New Business.

- Codified Ordinances Part Eleven, Article 1104, Section 1104 – Tree Conservation. ORC will begin to review text amendment changes presented and requested by Tree Commission during February 2024 Town Council Meeting. Tree Commission will be part of the discussions and actions.
- WV Law changes and adoptions presented by ORC Chair at March Town Council Meeting was discussed. ORC will wait to hear outcome from Town Attorney as to changes to our Town Code based on these recent adoptions.

#### 4. Additional Meeting Schedule (tentative)

- July 2, 2024, 3 pm.

Respectfully submitted by:

  
R. Meade-Curry, AICP  
ORC CHAIR

CORPORATION OF HARPERS FERRY, WEST VIRGINIA  
ORDINANCE # 2024 - 02

An ordinance of The Corporation of Harpers Ferry, West Virginia, amending, the Code of Ordinances of Harpers Ferry, PART THIRTEEN – PROJECT AND ZONING CODE, ARTICLE 1302 Words, Terms and Phrases; amending and adopting revised definition for “Structure.” Repealing all ordinances or parts of ordinances in conflict therewith; providing for severability; providing an effective date.

NOW THEREFORE BE it enacted and ordained by the Town Council of The Corporation of Harpers Ferry, that ARTICLE 1302 Words, Terms and Phrases definition for “**Structure**” of the Codified Ordinances of Harpers Ferry shall be amended and re-enacted to read as follows:

**Structure.** Anything constructed or erected for use, occupancy or ornamentation whether installed on, above or below the surface of land or water that requires the location on the ground or that is attached to something having location on the ground, excluding vehicles designed and used only for the transportation of people or goods, and excluding utility poles and towers constructed by a public utility and surface treatments such as parking lots, patios and driveways. A Structure does not include non-permanent objects or mechanical systems (HVAC equipment, fuel tanks, pool equipment, etc.). Non-permanent objects are not generally attached to the ground and may include, but not be limited to lawn furniture, picnic tables, grills, planters, birdbaths, and small pet shelters.

That all ordinances or parts of ordinances in conflict therewith are hereby repealed to the extent of any conflict.

That if any portion of this ordinance is, for any reason, held to be invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance and such invalid portion(s) thereof shall be severable.

Be it further ordained that this ordinance shall take effect upon second reading.

Passed FIRST READING the 13th day of May, 2024.

Passed SECOND and FINAL READING the 10th day of June, 2024.

Gregory Vaughn, Mayor      date      Nina Armstrong, Recorder      date

CORPORATION OF HARPERS FERRY, WEST VIRGINIA  
ORDINANCE # 2024 - 03

An ordinance of The Corporation of Harpers Ferry, West Virginia, amending, the Code of Ordinances of Harpers Ferry, PART THIRTEEN – PROJECT AND ZONING CODE, ARTICLE 1302 Words, Terms and Phrases; amending and adopting revised definition for “Short-Term Rental.” Repealing all ordinances or parts of ordinances in conflict therewith; providing for severability; providing an effective date.

NOW THEREFORE BE it enacted and ordained by the Town Council of The Corporation of Harpers Ferry, that ARTICLE 1302 Words, Terms and Phrases definition for “Short-Term Rental” of the Codified Ordinances of Harpers Ferry shall be amended and re-enacted to read as follows:

**Short-Term Rental.** The ~~Use~~ of a house or Dwelling Unit offered for rent for overnight occupancy ~~for transient occupancy~~ by tenants for a tenancy of 30 days or less, ~~excluding a Motel, Hotel, Rooming House, Boarding House or~~ , including Bed and Breakfast Inns, but not Hotels or Motels.

Strike-throughs indicate language that would be stricken from the present ordinance, and underscoring in red indicates new language that would be added or corrected.

That all ordinances or parts of ordinances in conflict therewith are hereby repealed to the extent of any conflict.

That if any portion of this ordinance is, for any reason, held to be invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance and such invalid portion(s) thereof shall



CORPORATION OF HARPERS FERRY, WEST VIRGINIA  
ORDINANCE # 2024 - 03

be severable.

Be it further ordained that this ordinance shall take effect upon second reading.

Passed FIRST READING the 10th day of June, 2024.

Passed SECOND and FINAL READING the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Gregory Vaughn, Mayor

\_\_\_\_\_  
date

\_\_\_\_\_  
Nina Armstrong, Recorder

\_\_\_\_\_  
date

## RESOLUTION

**A RESOLUTION OF THE CORPORATION OF HARPERS FERRY OF JEFFERSON COUNTY, WEST VIRGINIA AUTHORIZING PARTICIPATION IN THE EASTERN PANHANDLE HOME CONSORTIUM OF WEST VIRGINIA FOR THE PERIOD OF JULY 1, 2024 TO JUNE 30, 2027.**

**WHEREAS**, TITLE II of the National Affordable Housing Act of 1990 provides for the creation of the HOME Investment Partnership Program (hereinafter referred to as "HOME"); and

**WHEREAS**, the HOME regulations promulgated by the U.S. Department of Housing and Urban Development (HUD) under 24 CFR Part 92 authorizes units of general local government to enter into Housing Consortium Cooperation Agreements; and

**WHEREAS**, there is a need throughout the Eastern Panhandle of West Virginia to provide affordable housing for the low-and-moderate income residents; and

**WHEREAS**, the City of Martinsburg, County of Berkeley, Town of Hedgesville, County of Jefferson, Town of Bolivar, City of Charles Town, Corporation of Harpers Ferry, City of Ranson, Corporation of Shepherdstown, County of Morgan, Town of Bath, Town of Paw Paw, West Virginia, have formed a Consortium that has been designated as a Participating Jurisdiction under the HOME Program, thereby entitling the Consortium to seek annual funding; and

**WHEREAS**, the Eastern Panhandle HOME Consortium is required to seek designation as a HOME Consortium Agreement for the period FY 2025, FY 2026, and FY 2027 in order to seek annual funding; and

**WHEREAS**, the Corporation of Harpers Ferry entered into a three (3) year Housing Consortium Cooperation Agreement; and

**WHEREAS**, the Corporation of Harpers Ferry recognizes the need to obtain funding for affordable housing and has identified the HOME Program as a source of funds to meet this need.

**NOW, THEREFORE, BE IT RESOLVED BY THE CORPORATION OF HARPERS FERRY, WEST VIRGINIA THAT:**

1. The Corporation of Harpers Ferry will cooperate with the City of Martinsburg, County of Berkeley, Town of Hedgesville, County of Jefferson, Town of Bolivar, City of Charles Town, Corporation of Harpers Ferry, City of Ranson, Corporation

of Shepherdstown, County of Morgan, Town of Bath, Town of Paw Paw, West Virginia, in a Consortium for participation in the HOME Program; and

2. The **Mayor** of the **Corporation of Harpers Ferry** is hereby authorized to enter into a Cooperation Agreement for the period of July 1, 2025 to June 30, 2027 with the other members which form the Eastern Panhandle HOME Consortium of West Virginia; and
3. A copy of this resolution is to be submitted in the request to US. Department of Housing and Urban Development to approve funding of the Eastern Panhandle HOME Consortium of West Virginia for the above Fiscal Year 2025 HOME Investment Partnership Program.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**BY:**

\_\_\_\_\_  
Gregory Vaughn, Mayor

**ATTEST:**

\_\_\_\_\_

**HOUSING CONSORTIUM COOPERATION AGREEMENT  
BY AND BETWEEN  
THE CITY OF MARTINSBURG  
AND  
THE COUNTIES OF BERKELEY, JEFFERSON AND MORGAN  
WEST VIRGINIA**

This **three-year AGREEMENT** is entered into between the City of Martinsburg (hereinafter referred to as "City"); and the Berkeley County Commission for and on behalf of Berkeley County, a political subdivision of the State of West Virginia; the Jefferson County Commission for and on behalf of Jefferson County, a political subdivision of the State of West Virginia; and the Morgan County Commission for and on behalf of Morgan County, a political subdivision of the State of West Virginia (hereinafter referred to as "Counties"), and the incorporated communities contained in each of the above said Counties.

**WHEREAS**, Title II of the National Affordable Housing Act of 1990 provides for the creation of the HOME Investment Partnerships Program (hereinafter referred to as "HOME"); and

**WHEREAS**, the HOME regulations established by the U.S. Department of Housing and Urban Development (HUD) at 24 CFR Part 92 authorizes units of general local government to enter into Housing Consortium Cooperation Agreements for a three-year period and allows for annual recertification of Consortiums; and

**WHEREAS**, the City and Counties have determined that obtaining funding under the HOME Program as part of a Consortium Participating Jurisdiction will increase their ability to provide affordable housing for their low -income constituencies.

**NOW THEREFORE**, the parties to this **AGREEMENT** do hereby agree as follows:

**SECTION I – DEFINITIONS:**

The definitions contained in 24 CFR Part 92, Subpart A., paragraph 92.2 are incorporated herein by reference and made a part hereof, and the terms defined in this section have the meanings given them:

- A. "Act" means Title II, of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. Law 101-625), (42 U.S.C. 12721)
- B. "Consolidated Plan" means the comprehensive planning and application document as set forth in 24 CFR Part 91 and encompasses a local government's housing needs, with a focus on affordable housing for low income families.



- C. "HOME Program" means a procedure established for the use of funds made available from HUD through the Act to carry out multi-year housing strategies through acquisition, rehabilitation and new construction of housing, tenant-based rental assistance, and homebuyer assistance.
- D. "HUD" means the United States Department of Housing and Urban Development.
- E. "Regulations" means 24 CFR Part 92 HOME Investment in Affordable Housing implementing regulations as issued by HUD.
- F. "Member" means a unit of local government which is a signatory to this Agreement and therefore a member of the Consortium for the purpose of carrying out eligible activities under 24 CFR Part 92, (which is the City of Martinsburg, Berkeley County, Jefferson County, and Morgan County).
- G. "Representative Member" means the unit of local government designated hereafter as the one member to act in a representative capacity for all members for the purposes of this agreement. The Representative Member, which is the City of Martinsburg, will be delegated the overall responsibility for ensuring that the Consortium's HOME Program is carried out in compliance with the requirements of 24 CFR Part 92 and will be responsible for the requirements concerning the Consolidated Plan (CP).
- H. "IDIS" means the Integrated Disbursement and Information System (IDIS), HUD's on-line system for draws and reporting for the HOME Program, or any other system that HUD may implement in its place.

## **SECTION II – PURPOSE:**

This Agreement is to form a **CONSORTIUM** of four (4) units of general local government geographically located for designation as a **PARTICIPATING JURISDICTION** under the **ACT**, said **PARTICIPATING JURISDICTION** to be known and hereinafter may be referred to as the Eastern Panhandle HOME Consortium of West Virginia.

The signatory parties agree to cooperate in undertaking, or assisting in undertaking housing assistance activities under the HOME Investment Partnerships Program in compliance with HUD regulations and the local Consolidated Plan of the member jurisdictions.

## **SECTION III- GENERAL PROVISIONS**

- A. The members agree to cooperate in undertaking or to assist in undertaking housing assistance activities in compliance with the applicable Consolidated Plan and the HOME Program.

- B. The members agree to undertake the development of a Consolidated Plan for each year covered by this Agreement.
- C. The members agree to take affirmative action to further fair housing in their jurisdictions. Such actions may include planning, education and outreach, and enforcement.

#### **SECTION IV – ADMINISTRATION:**

- A. The City and the Counties, including the incorporated communities in each County, mutually agree that the City of Martinsburg shall act as the Representative Member for all participants in the Eastern Panhandle HOME Consortium for the purposes of the Act.
- B. The City and the Counties, including the incorporated communities in each County, mutually agree that the City of Martinsburg, in its role as Representative Member, is granted the overall responsibility for ensuring that the Eastern Panhandle HOME Consortium's Program is carried out in compliance with the requirements of the HOME Program.
- C. The City and the Counties, including the incorporated communities in each County, shall participate jointly in the development of the Eastern Panhandle HOME Consortium's HOME Program. The Consortium will form a council known as the Eastern Panhandle HOME Consortium Council. Each Member of the Consortium will appoint three (3) representatives to the Council. The City and the Counties will mutually agree and appoint a Chairperson of the Council, who will be in addition to the number of representatives appointed by the Member Jurisdictions.
- E. The HOME Consortium Council will define a strategy and programs in sufficient detail to accommodate the collective and individual needs and priorities of any and all of the Members constituting the Eastern Panhandle HOME Consortium. The Members shall review and approve the strategy and programs for the annual use of HOME funds, as well as, have the opportunity to review and approve any program changes or amendments prior to action being taken by the Representative Member's governing body.
- F. The City and Counties, including the incorporated communities in each County, shall be entitled to the amount of HOME Program funding based on its percentage of the low/moderate income population of the entire Consortium Area, as established by U.S. Census data of the total allocation to the Eastern Panhandle HOME Consortium. Members of the Consortium may elect to combine their allocations to carry out collaborative HOME activities. Any funds allocated to Members but remaining unobligated fifteen (15) months after the initial allocation date will be recaptured and redistributed by the HOME Consortium Council. Any funds recaptured will be offered to the other Members



for reprogramming for eligible activities in accordance with the HOME Program Regulations. The final decision for distribution of these funds will be made by the HOME Consortium Council. If any party terminates this agreement in whole or in part, all work completed and uncompleted on this project will become the property of the remaining parties to this agreement, and the disposition or completion of uncompleted work on the project will become the responsibility of the remaining parties, pursuant to the conditions of this paragraph. Ownership of all personal property acquired by virtue of the execution of or performance under this agreement is vested in the parties, pursuant to the pro-rata share of funds allocated to them, but the parties shall not take legal title to any real property, including, but not limited to, easements.

- G. Nothing in this Agreement will preclude the ability of the City or Counties, including the incorporated communities in each County, either individually or jointly in applying for financial assistance under the State of West Virginia HOME Program. Furthermore, it is expressly agreed and understood that any specific projects eligible for HOME funding may be submitted to the HOME Consortium Council by any Consortium Member, any participating municipality located in Member Counties, any authority, and/or nonprofit housing agency for funding under the Consortium's annual HOME entitlement funds.
- I. Each Member is responsible for submitting in a timely manner to the Representative Member all information necessary for participation in the Eastern Panhandle HOME Consortium as defined in the Regulations. This includes all information necessary for the Consolidated Plan, the Program Description, Certifications, written agreements with sub-recipients and performance reports. The Counties of Berkeley, Jefferson and Morgan will submit this documentation to the City of Martinsburg in order to insure a coordinated effort.
- J. Each Member shall be responsible for any required matching funds for specific eligible projects as determined by HUD submitted by that particular member. However, this does not limit the use of excessive local match from one HOME Member to another, if agreed to by the HOME Consortium Council and the Member which has the excess local match.
- K. Each Member shall be responsible for the following:
  - 1. Appoint three (3) representatives to the Eastern Panhandle HOME Consortium Council.
  - 2. Fill vacancies on the Consortium Council in a timely manner and ensure the attendance of their appointments at meetings.
  - 3. Provide information required for the preparation of revisions to the existing Five -Year Consolidated Plan.
  - 4. Conduct an annual housing needs public hearing for the use of HOME funds.

5. Adopt by resolution and renew annually the participation in the Eastern Panhandle HOME Consortium.
  6. Be responsible for determining local housing needs and the use of HOME funds to address those needs.
  7. Provide an annual description of proposed project activities in accordance with the annual budget and distribution of funds.
  8. Provide documentation for matching funds or donations to the HOME Program.
  9. Maintain files and documentation for compliance with Federal regulations and make these files available for review and monitoring by HUD and/or the Representative Member.
  10. Prepare, process and forward requisitions of funds to the Representative Member.
  11. Review and approve any amendment to the Cooperation Agreement.
- L. The Representative Member shall be responsible for the overall administration of the HOME Program and meeting the Federal guidelines. In particular the following are the duties and responsibilities:
1. Provide staff to manage the program.
  2. Revise the existing Five-Year Consolidated Plan to include the HOME Program and statistical information on the other consortium members.
  3. Prepare and submit all required notices, plans, performance reports, and documentation as required by HUD.
  4. Ensure that the program and activities are in compliance with the Federal regulations.
  5. Provide the other members with guidelines and policies of the program.
  6. Hold a public hearing on the annual HOME Program and adopt the budgets and activities outlines by the HOME Consortium Council.
  7. Assist the other Consortium members in meeting the Citizen Participation requirements of HUD.
  8. Review and approve all project funding agreements for each activity.
  9. Monitor the other members for compliance with the Federal regulations.
  10. Prepare an environmental review record for the HOME Program and secure the release of funds from HUD for program activities.
  11. Provide guidance and assistance to the other members to ensure compliance with the Federal labor standards.
  12. Prepare and execute all written agreement with sub-recipients and contractors to receive HOME funds.
  13. Maintain files on each project activity for monitoring by HUD.
  14. Prepare and maintain the HOME match log as required by HUD.
  15. Prepare the annual Consolidated Annual Performance Evaluation Report (CAPER) for annual submission to HUD.
  16. Establish and maintain a local HOME fund account including Federal drawdowns and program income.



17. Process Federal drawdowns of funds from the U.S. Treasury for project activities through the IDIS system.
  18. Process payment requisitions and requests for funds from the other consortium members for project activities.
  19. Prepare an annual budget showing the distribution of HOME funds to each Consortium member.
  20. Prepare quarterly reports on expenditures, commitment of funds, and remaining balances for each consortium member and their project activities.
  21. Contract for an annual audit of the HOME Program by an outside independent auditing firm.
  22. Supervise the closeout of annual grants with HUD.
- M. The HOME Consortium Council shall be formed to oversee the program and provide guidance on the use of funds. The specific duties and responsibilities of the Consortium Council is as follows:
1. Each member of the HOME Consortium shall have three (3) representatives to the Consortium Council.
  2. Provide guidance and direction in promoting and affirmatively further fair housing in the Eastern Panhandle.
  3. Define an overall strategy and programs based on the needs of the Consortium members.
  4. Establish priorities for the use of HOME funds.
  5. Approve the allocation and distribution of funds among the Consortium members based on the low- and moderate-income population of each member as a percentage of the Eastern Panhandle's total low- and moderate-income population.
  6. Reallocate funds that are uncommitted or unobligated after fifteen (15) months after the approval by HUD of the annual HOME grants.
  7. Ensure that any required matching funds are provided by the Members or from the non-federal funds portion of HOME assisted projects.
  8. Review and approve any amendments to the Cooperation Agreement.
  9. Review and approve documentation submitted by non-profit organizations for designation as a local Community Housing Development Organization (CHDO).
  10. Monitor and recertify annually any CHDO's.
  11. Adopt and assure compliance with affirmative marketing policies and procedures.
  12. Approve the annual consolidated Action Plan in regard to the use of HOME funds.
- N. In accordance with Section 91.402 of the Consolidated Plan Final Rule, the City of Martinsburg has a Program year that begins on July 1<sup>st</sup> and ends on June 30<sup>th</sup> each year, the HOME funds will also have the same program year start date.

#### **SECTION IV- AFFIRMATIVE MARKETING POLICIES AND PROCEDURES:**

##### **A. Statement of Policy -**

In accordance with the Eastern Panhandle HOME Consortium's, commitment of non-discrimination and equal opportunity in housing, the Consortium hereby establishes procedures to affirmatively market units assisted under the HOME Investment Partnerships Program. These procedures are intended to further the objectives of Title VIII of the Civil Rights Act of 1988 and Executive Order 11063. In addition, the Consortium will abide by and establish a minority outreach program in accordance with 24 CFR 92.350 (a)(5).

The Consortium believes that individuals of similar economic levels in the same housing market area should have available to them a like range of housing choices regardless of their race, color, religion, sex, familial status, disability or national origin. Individuals eligible for public housing assistance or who have minor children should have available to them, a like range of housing choices.

The Consortium will carry out this policy through affirmative marketing procedures designed for the HOME Investment Partnerships Program.

- B. The Consortium will inform the public, potential tenants and owners about its Fair Housing and Affirmative Marketing Policies.

#### **SECTION V – TERMS OF THE AGREEMENT:**

- A. This agreement shall be in effect for a period of one fiscal year, subject to annual renewal for any additional period of time needed to complete all phases of the project, each of which annual renewal periods shall be limited to one fiscal year; provided that, in addition to the right of non-renewal, all parties hereto shall have the right to terminate this agreement on any 12-month anniversary of the date of this agreement by giving to the other parties 30 days' written notice of such termination. It is the City's the Counties' intentions to remain members of the Consortium for the period necessary to carry out all activities that will be funded from the three **Federal Fiscal Years 2025, 2026, and 2027** provided that the Consortium qualifies as a participating jurisdiction under the Home Investment Partnerships Program, by approval of annual renewals of this agreement, and subject to said renewals will take necessary steps to provide budget allocations for funding purposes.
- B. Prior to the adoption of any amendment to this agreement, partial or complete termination of this agreement including the incorporation of changes necessary to meet the requirements for a subsequent three (3) year consortium designation period, the members agree to submit to the U.S. Dept. of HUD any revisions for its approval.

- C. This agreement covers the designation period of the **Federal Fiscal Years of 2025, 2026, and 2027** which the Consortium is to qualify to receive HOME funds. This agreement may automatically be renewed for participation in successive three (3) year designation periods for HOME Entitlement funds by the U.S. Dept. of HUD. In order to qualify for automatic renewal by HUD, the Representative Member must notify each participating unit of general local government of its right not to participate for the successive three (3) year designation periods. This notification must be submitted to each participating unit of general local government by the date specified in the U.S. Dept. of HUD Consortia designation notices.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF MARTINSBURG, West Virginia

\_\_\_\_\_  
Kevin Knowles  
Mayor

Attest: \_\_\_\_\_  
Gena L. Long, City Recorder

Including the incorporated areas of the Town of Bolivar, City of Charles Town, Corporation of Harpers Ferry, City of Ranson, and Corporation of Shepherdstown, Jefferson County, West Virginia.

JEFFERSON COUNTY INCORPORATED AREA:

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2024

CORPORATION OF HARPERS FERRY  
For and on behalf of the municipality of Harpers Ferry  
a political subdivision of the State of West Virginia

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_