

**BERRYVILLE TOWN COUNCIL**  
**Thursday, March 25, 2010**  
**Berryville-Clarke County Government Center**  
**Called Meeting**  
**3:30 p.m.**

**MINUTES**

**Roll:**

**Town Council:**

Present: Wilson Kirby, Mayor; Harry Lee Arnold, Jr., Recorder; Allen Kitselman; Allan W. McWilliams, Lawrence Russell, III; Absent: Mary Daniel

**Staff:** Keith Dalton, Town Manager; Christy Dunkle, Town Planner/Assistant Town Manager; Dave Tyrrell, Director of Utilities; Celeste Heath, Town Clerk

**Press:** Becky Lane, Winchester Star

- 1. Call to Order** – Wilson Kirby, Mayor  
Mayor Kirby called the meeting to order at 3:32 p.m.

**Amendment of Agenda**

Mr. Dalton asked the Town Council to amend the agenda to reverse the order of items 3 and 4 and to add item **5. WQIF Grant Agreement Amendment** to consider date changes to the previously approved grant agreement.

Upon motion by Council member McWilliams, seconded by Council member Russell the Town Council agreed to amend the agenda to reverse the order of items 3 and 4 and to add item **5. WQIF Grant Agreement Amendment**

- 2. Closed Session** - Pursuant to Section 2.2-3711.A.7 of the Code of Virginia, 1950, As Amended, for consultation with legal counsel related to borrowing for the wastewater treatment plant and the treated wastewater outfall line.

Motion to enter Closed Session

It was moved by Council member McWilliams, seconded by Council member Russell that the Council of the Town of Berryville enter Closed Session pursuant to Section 2.2-3711.A.7 of the Code of Virginia, 1950, As Amended, for consultation with legal counsel related to borrowing for the wastewater treatment plant and the treated wastewater outfall line.

**VOTE:**

Recorded Vote:

Ayes:

Wilson Kirby, Mayor  
Harry Lee Arnold, Jr., Recorder  
Allen Kitselman  
Allan McWilliams  
Lawrence Russell, III

Nays:

None

Abstain: None  
Absent During Vote: Mary Daniel  
Absent During Meeting: Mary Daniel

- a. Enter Closed Session  
The Town Council entered closed session at 3:34 p.m.
- c. Reconvene Open Session  
The Town Council reconvened in open session at 4:10 p.m.
- d. Certification of Closed Session

**Town of Berryville  
RESOLUTION**

MEETING DATE: May 25, 2010

MOTION BY: Allan McWilliams

SECOND BY: Lawrence Russell

CERTIFICATION OF CLOSED SESSION

WHEREAS, the Council of the Town of Berryville, Virginia (Council), has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712.D of the Code of Virginia requires a certification by this Council that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Council hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Council.

VOTE:

Recorded Vote:

Ayes: Wilson Kirby, Mayor  
Harry Lee Arnold, Jr., Recorder  
Allen Kitselman  
Allan McWilliams  
Lawrence Russell, III

Nays: None

Abstain: None

Absent During Vote: Mary Daniel

Absent During Meeting: Mary Daniel

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Harry Lee Arnold, Jr., Recorder

**3. Discussion/Action** – Proposed adoption of a business plan that establishes a means by which the Town of Berryville will meet expenses in its Sewer Fund.

Mr. Dalton presented a brief update of the Wastewater Treatment Plant and Outfall Line project. He presented a rate study that the Town commissioned Chester Engineers to perform. He said that the study suggests a water rate of \$7.31 per 1000 gallons and a sewer rate of \$16.73 per 1000 gallons. He said that he would not recommend any increase in the water rates and would suggest using reserves to bridge the difference.

Mr. Dalton then went over a letter to Dr. Sheryl Bailey of the Virginia Resources Authority that lays out the Town of Berryville's business plan for the project and indicates exactly what income and expenditures will be. He said that the business plan shows an FY 11 sewer rate increase of \$1.50 and a \$1.50 annual increase over the next 4 years. He noted that these increases are based on no projected increase in usage and that very conservative numbers were used in this calculation.

Mr. Dalton said that he talked to VRA this afternoon and that they are amenable to this business plan. He asked the Town Council for approval and implementation of the business plan. Carolyn Perry, the Town's Bond Counsel said that this is a key component to the town's financing package.

Council member Kitselman made a motion that the Council of the Town of Berryville adopt the attached Resolution Approving and Implementing a Business Plan and authorizing Mayor Kirby to approve minor modifications to the Business Plan provided that notice of any changes are forwarded to the other members of the Town Council prior to submission to VRA. Council member McWilliams seconded the motion.

Ms. Perry noted that the WQIF grant amount referenced on the first page has changed from \$12,100,000 to \$12,063,333.00.

Council member Kitselman made a motion to amend the previous motion to change the dollar amount on page 1 of the Resolution Approving and Implementing a Business Plan from \$12,100,000 to \$12,063,333.00. Council member McWilliams seconded the motion and it was approved by the Town Council.

VOTE:

Recorded Vote:

Ayes:	Wilson Kirby, Mayor Harry Lee Arnold, Jr., Recorder Allen Kitselman Allan McWilliams Lawrence Russell, III
Nays:	None
Abstain:	None
Absent During Vote:	Mary Daniel
Absent During Meeting:	Mary Daniel

Mayor Kirby called the question on the amended motion and the Council of the Town of Berryville adopted the attached Resolution Approving and Implementing a Business Plan and authorized Mayor Kirby to approve minor modifications to the Business Plan provided that notice of any changes are forwarded to the other members of the Town Council prior to submission to VRA.

VOTE:

Recorded Vote:

Ayes: Wilson Kirby, Mayor  
Harry Lee Arnold, Jr., Recorder  
Allen Kitselman  
Allan McWilliams  
Lawrence Russell, III

Nays: None

Abstain: None

Absent During Vote: Mary Daniel

Absent During Meeting: Mary Daniel

**RESOLUTION**  
**APPROVING AND IMPLEMENTING A BUSINESS PLAN**

WHEREAS, Virginia Resources Authority ("**VRA**"), in a letter to the Town of Berryville, Virginia (the "**Town**"), dated January 9, 2010, as amended and supplemented by a Letter dated March 22, 2010 (together, the "**Commitment Letter**"), has advised the Town that the State Water Control Board has authorized a 0% interest rate loan in the principal amount up to \$11,750,000 from Virginia Water Facilities Revolving Fund ("**Fund**") being administered by VRA in order in order to provide permanent financing of all or any portion of the costs to (i) acquire, construct, and equip a new wastewater treatment facility and a lab and control building therefor to be located on the existing site for the Town's wastewater treatment facilities at 362 Parshall Road, Berryville, Virginia, including various upgrades and capital improvements in connection therewith, (ii) acquire, construct and equip a new approximately four-mile effluent discharge line to be constructed along a new route generally along and in the public right-of-way for State Route 7 to the Shenandoah River, and (iii) pay issuance costs in connection with such loan (collectively, the "**Project**"); and

WHEREAS, the terms of such loan to the Town from VRA, as Administrator of the Fund, shall be described, among other things, in accordance with such Commitment Letter and a Financing Agreement to be dated as of March 1, 2010, by and between the Town and VRA, as Administrator of the Fund (the "**Financing Agreement**"); and

WHEREAS, in addition, the Town has received notification from Virginia Department of Environmental Quality that the Town shall receive a \$12,063,033 grant from the Water Quality Improvement Fund (the "**WQIF Grant**") in order to assist the Town to pay a portion of the costs of the Project; and

WHEREAS, Chester Engineers, in a letter to the Town dated March 17, 2010, a copy of which is attached hereto as **Exhibit A** (the "**Rate Study**"), has recommended to the Town certain sewer and water user fees in order for the Town to operate and maintain its sewer and water systems, pay debt service with respect to such systems, and fund and maintain reserve accounts with respect thereto; and

WHEREAS, as required by VRA pursuant to the Commitment Letter, among other things, the Town has prepared a Business Plan which reflects the user fees set forth in such Rate Study, a draft copy thereof being attached hereto as **Exhibit B**; and

WHEREAS, accordingly, the Town desires to approve and implement such Business Plan, as required by VRA in order for the Town to receive definitive confirmation from VRA that the Town shall receive the entire \$11,750,000 loan funds to be used, together with the WQIF Grant and other lawfully available monies, to pay the costs of the Project.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Berryville, Virginia, as follows:

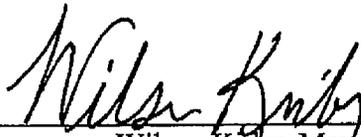
1. The Town Council hereby approves and adopts the Business Plan including transactions contemplated thereunder, all as required by VRA in order for the Town to receive definitive confirmation from VRA that the Town shall receive the entire \$11,750,000 loan funds from VRA, as Administrator of the Fund, to be used by the Town together with the WQIF Grant and other lawfully available monies to pay the costs of the Project.

Accordingly, the Town agrees and confirms that the Town shall proceed with diligence and in good faith to take all actions necessary or convenient regarding its implementation of the Business Plan, all as described thereunder, in order to demonstrate that the Town shall have definitive and recurring resources sufficient to meet expenses and debt service requirements with respect to the Town's sewer system, among other things, including the funding of the reserve requirement described in the Commitment Letter and any other reserve accounts deemed advisable by the Council from time to time.

2. The Town Manager is hereby directed to deliver a copy of this Resolution to VRA, together with the attachments hereto, as soon as practicable.

3. This Resolution shall take effect immediately.

**Approved March 25, 2010**



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Wilson Kirby, Mayor  
Town of Berryville, Virginia

*Exhibit A - Copy of Rate Study*  
*Exhibit B - Copy of Business Plan*

# Exhibit A



Date: March 17, 2010

To: Keith Dalton, Town Manager  
23 E. Main Street  
Berryville, VA 22611

Project Name: BP-10-5679-GB  
User Fee Update  
Berryville, Virginia

From: Jerry Wolfe, Project Manager  
Chester Engineers  
125 W. Burke Street  
Martinsburg, WV 25401

Following are the recommended user fees calculated subsequent to our meetings held in your office on Friday, March 12, 2010 and Tuesday March 16, 2010:

### Sewer User Fees

Costs for Additional Personnel	\$200,000
Normal Operating Costs	\$500,000
Additional Operating Budget for New Process	\$390,000
Bonded Indebtedness (25yr @ 6% for \$11.75 Mil.)	\$470,000
Reserve Funds for Equipment Maintenance	\$150,000
<b>Total Annual</b>	<b>\$1,650,000</b>

Daily Income Required (Total Annual/365 Days)  $\frac{\$1,650,000}{365} = \$4,521.65$   
Cost per 1000 gal. (DIR/270,260 gpd usage billed) X 1000 =  $\frac{\$4,521.65}{270.26} = \$16.73$  per 1000 gallons

### Water User Fees

Personnel	\$137,000
Treatment	\$348,000
Distribution and Maintenance	\$145,500
Capital Outlay	\$136,500
Contingency	\$31,500
Debt Service	\$140,500
<b>Total Annual</b>	<b>\$939,000</b>

Daily Income Required (Total Annual/365 Days)  $\frac{\$939,000}{365} = \$2,572.60$   
Cost per 1000 gal. (DIR/352,000 gpd produced) X 1000 =  $\frac{\$2,572.60}{352} = \$7.31$  per 1000 gallons

Note: The Debt Service for Water expires in December of 2011. Without the Debt Service the Water User Fee becomes \$6.22 per 1000 gallons.

If you have any questions please call our office or my cell 304-707-5140.

# Exhibit B

*Draft*

March 25, 2010

The Honorable Sheryl D. Bailey, PhD.  
Executive Director  
Virginia Resources Authority  
1111 E. Main Street, Suite 1920  
Richmond, VA 23219

Dear Dr. Bailey:

In your letter of March 9, 2010 regarding the Town of Berryville's loan request, you noted that \$4,423,250 of the loan "(Phase 2) shall be subject to certain conditions being met prior to disbursement to the Town as set forth in the enclosed Financing Agreement (Section 3.3)". Section 3.3 of the Financing agreement requires the Town to retain a consultant to show in each fiscal year the available system cash flow will equal at least 100% of the amount required during the Fiscal Year to meet obligations.

Please accept this letter and attachments (Sewer Treatment Fees spreadsheet and Sewer Fund Revenue/Expenses spreadsheet) and signed motion adopting this plan as the Town of Berryville Business Plan required in Section 3.3 of the Financing Agreement.

The Town Council, at a duly called meeting on March 25, 2010, voted unanimously to adopt this business plan to ensure that the Town's Sewer Fund cash flow is in excess of 100% of the amount required to meet obligations.

Sewer Treatment Fees Spreadsheet

This spreadsheet provides the projected sewer fund treatment fee revenue for FY11-FY14. This spreadsheet assumes no increase in usage for FY11-FY14.

Sewer Fund Revenue/Expense Spreadsheet

This spreadsheet provides the projected sewer fund revenues and expenses for FY11-FY14.

You will note that increased O&M expenses are first reflected in FY12. It is expected that the new wastewater treatment plant will be online for seven months of FY12.

You will also note that debt service begins in April 2012 (FY12).

Thank you for your consideration of this plan. We ask that the plan be accepted and that any conditions placed on Phase 2 of the loan be eliminated.

The Honorable Sheryl D. Bailey, PhD.  
March 25, 2010  
Page 2

*DRAFT*

Again, thank you for your assistance in this matter.

Sincerely,

Wilson Kirby  
Mayor

Cc: Town Council  
Kéith Dalton  
Jean Bass  
Walter Gills  
Carolyn Perry

*Draft*

**Sewer Treatment Fees**

<b>Date</b>	<b>Rate</b>	<b>Gallons Billed</b>	<b>Projected Revenue</b>
FY 10-11	\$12.50	98645	\$1,233,062.50
FY 11-12	\$14.00	98645	\$1,381,030.00
FY 12-13	\$15.50	98645	\$1,528,997.50
FY 13-14	\$17.00	98645	\$1,676,965.00
			\$5,820,055.00

Draft

4. **Discussion/Action** – Proposed adoption of a resolution authorizing the issuance by the Town of Berryville in the amount of \$11,750,000 Town of Berryville, Virginia general obligation bonds, further secured by a pledge of the revenues from the water and wastewater systems; to acquire, construct and equip a wastewater treatment plant.

**SEWER FUND**

**Revenue Requirements**

	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014
Mr. Dalton explained that R.L. Rider and Company was the apparent low bidder (\$1,288,220.00) for the outfall line and has given an extension on the bid amount until March 31. He said that Caldwell and Sattmeyer was the apparent low bidder (\$2,176,533) for the wastewater treatment plant and has also granted an extension on their bid. He said that the extensions were necessitated because a lot of the DEQ processing can't start until the low bid is determined.				
User Fees	\$1,233,062.50	\$1,381,030.00	\$1,528,997.50	\$1,676,965.00
Availability Fees	\$0.00	\$0.00	\$0.00	\$0.00
Misc Fees/Charges	\$100.00	\$100.00	\$100.00	\$100.00
Town Funds	\$598,557.02	\$43,705.12	\$1,095,262.50	
WQIF Grant Fund Proceeds*	\$4,189,400.00	\$5,000,000.00	\$2,100,000.00	
VRA Loan Proceeds**	\$5,850,000.00	\$5,000,000.00	\$750,000.00	

Caroline Perry, the Town's bond counsel was present and explained the resolution before the Town Council that will authorize a \$11,750,000 General Obligation Bond. She said that the Virginia Resources Authority (VRA), the lender, is requiring a pledge of water and sewer revenues to secure the loan. She said that they are also requiring a reserve in the amount of 2 years of debt service (\$940,000). She said that this can be reduced to a 1 year reserve upon demonstration that sufficient revenues are available.

**Expenses**

O&M Expenses	\$1,288,220.00	\$67,757.00	\$871,500.00	\$915,075.00
4% O&M Contingency	\$51,528.80	\$27,502.80	\$34,860.00	\$38,603.00
Capital Funding Requirements	\$2,176,533.00	\$20,000.00	\$4,000,000.00	\$80,000.00
Debt Service***	\$89,840.00	\$279,750.00	\$470,000.00	\$700,000.00

**Total Expenses** \$11,871,119.52 \$11,424,835.12 \$5,474,360.00 \$1,501,678.00

Ms. Perry explained that this a General Obligation bond with a term of 25 years with 0% interest.

Net Surplus(Deficiency)	\$0.00	\$0.00	\$0.00	\$175,387.00
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Ms. Perry explained that the amendments to the DEQ WQIF grant agreement are within this Resolution.

% of Rate Revenue	0.00%	0.00%	0.00%	10.46%
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**Projected Annual Rate Adjustment**

	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014
Rate	\$1.50	\$1.50	\$1.50	\$1.50
% Increase	13.63%	12.00%	10.71%	9.67%
Rate Range	11.00-12.50	12.50-14.00	14.00-15.50	15.50-17.00

The Council then discussed a meeting schedule that would allow the Town Council to execute and approve all of the items needed to move forward with the project. The Town Council, by consensus cancelled a Called Meeting scheduled for March 29, 2010 and scheduled a Called Meeting for March 31, 2010 at 9:00 a.m.

Upon motion by Council member Kitselman, seconded by Council member McWilliams, the Council of the Town of Berryville adopted the attached Resolution Authorizing the \$11,750,000 Town of Berryville, Virginia General Obligation Revenue Bond, Series 2010, and Providing for the Form and Details Thereof.

\*\*\*\* Debt Service Begins April 2012

**VOIE:**

Recorded Vote:  
 Ayes:  
 Wilson Kirby, Mayor  
 Harry Lee Arnold, Jr., Recorder  
 Allen Kitselman  
 Allan McWilliams

	Lawrence Russell, III
Nays:	None
Abstain:	None
Absent During Vote:	None
Absent During Meeting:	Mary Daniel



**RESOLUTION**

**AUTHORIZING THE \$11,750,000 TOWN OF BERRYVILLE, VIRGINIA  
GENERAL OBLIGATION REVENUE BOND, SERIES 2010,  
AND PROVIDING FOR THE FORM AND DETAILS THEREOF**



WHEREAS, pursuant to the Town Charter (the "Charter") and the Public Finance Act, Chapter 26, Title 15.2 of the Code of Virginia, 1950, as amended (the "Public Finance Act"), the Town of Berryville, Virginia, (the "Town") is duly incorporated and empowered to finance and refinance costs in connection with capital projects for essential governmental purposes for the benefit of the Town and to issue its general obligation bonds and notes to pay such costs, and to pledge the revenues of the Town's water and sewer systems to the payment thereof, all as described below; and

WHEREAS, on March 9, 2010, the Council held a public hearing, upon due notice therefor, regarding the issuance by the Town from time to time of up to an aggregate \$18,000,000 general obligation bonds, all in accordance with the requirements of Section 15.2-2606 of the Public Finance Act; and

WHEREAS, Virginia Resources Authority ("VRA"), in a letter to the Town dated January 9, 2010, as amended and supplemented by a Letter dated March 22, 2010 (together, the "Commitment Letter"), being attached hereto as Exhibit A, advised the Town that the State Water Control Board has authorized a 0% interest rate loan in the principal amount up to \$11,750,000 from Virginia Water Facilities Revolving Fund ("Fund") being administered by VRA in order in order to provide permanent financing of all or any portion of the costs to (i) acquire, construct, and equip a new wastewater treatment facility and a lab and control building therefor to be located on the existing site for the Town's wastewater treatment facilities at 362 Parshall Road, Berryville, Virginia, including various upgrades and capital improvements in connection therewith, (ii) acquire, construct and equip a new approximately four-mile effluent discharge line to be constructed along a new route generally along and in the public right-of-way for State Route 7 to the Shenandoah River, and (iii) pay issuance costs in connection with such loan (collectively, the "Project"); and

WHEREAS, the terms of such loan to the Town from VRA, as Administrator of the Fund, shall be described, among other things, in accordance with such Commitment Letter and a Financing Agreement to be dated as of March 1, 2010, by and between the Town and the VRA, as Administrator of the Fund (the "Financing Agreement"), a form of which is attached hereto as Exhibit B; and

WHEREAS, in addition, the Town has received notification from Virginia Department of Environmental Quality that the Town shall receive a \$12,063,033 grant from the Water Quality Improvement Fund (the "WQIF Grant") with respect to the Project in order to assist the Town to pay a portion of the costs thereof; and

WHEREAS, Chester Engineers, in a letter to the Town dated March 17, 2010 (the "Rate Study"), has recommended to the Town certain sewer and also water user fees in order to operate

and maintain the sewer and water systems owned and operated by the Town (collectively, the "System"), pay debt service with respect to the System, and fund and maintain certain reserve accounts therefor; and

WHEREAS, as required by VRA pursuant to the Commitment Letter, among other things, the Town has prepared, adopted and approved the implementation of a Business Plan (the "Business Plan") with respect to the System, and such Business Plan reflects the user fees set forth in the Rate Study, as described above; and

WHEREAS, the Town now desires to approve the form and details of such long-term borrowing from VRA, as Administrator of the Fund, in an original principal amount of \$11,750,000, as further described below; and

WHEREAS, the Town may issue its \$11,750,000 general obligation revenue bond, at the election of the Council, under the provisions of Section 15.2-2601 of the Public Finance Act of without regard to the requirements, restrictions or other provisions contained in any charter or local or special act applicable to the Town, and, further, under the provisions of Section 15.2-2607 of the Public Finance Act, the Council may finally adopt this Resolution authorizing the issuance thereof at the meeting at which it is introduced upon a majority vote of the members thereof.

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**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Berryville, Virginia, as follows:

1. It is hereby determined to be necessary and expedient for the Town to obtain a loan in the principal amount of **\$11,750,000**, to be used, together with other lawfully available funds therefor, if any, to provide permanent financing of all or any portion of the costs of the Project, all as described in this Resolution. Accordingly, there is hereby authorized to be issued and sold to VRA, as Administrator of the Fund, such debt obligation of the Town to be designated up to "**\$11,750,000 Town of Berryville, Virginia General Obligation Revenue Bond, Series 2010**" (the "Bond"), for the purpose of financing all or any portion of the Project, pursuant to the terms and conditions set forth in this Resolution.

The Council hereby elects to issue the Bond under the provisions of Section 15.2-2601 of the Public Finance Act, among other provisions thereof, and, further, the Town shall issue the Bond in accordance with the provisions of Section 15.2-2607 of the Public Finance Act, among other provisions thereof.

2. The Town Council hereby accepts and approves the terms of the Commitment Letter and the substantially final form of the Financing Agreement; *provided, however*, it is to be understood that the **final** form of the Financing Agreement to be executed and delivered by the Town on the Closing Date (defined below) to VRA, as Administrator of the Fund (or arrangements otherwise contemplated thereunder), shall reflect (i) VRA's confirmation (or other

acceptance) of the Business Plan being implemented by the Town in order that the Town may execute, issue and deliver the Bond on the Closing Date with confidence that sufficient loan funds, namely, an amount up to \$11,750,000, shall be provided to the Town by VRA, as Administrator of the Fund, to be used, together with the WQIF Grant and other lawfully available funds, to pay the costs of the Project, and (ii) with respect to the Reserve Requirement under the Financing Agreement, the Town shall be permitted to procure fiduciary services of a local financial institution that shall be acceptable to the Town and to VRA to serve as Fiscal Agent under the Financing Agreement for the custody and investment thereof on behalf of the Town, and for the benefit of and as required by VRA in connection with the due payment of the Bond by the Town.

The Mayor or the Recorder of the Town, or the Town Manager, any one or more of whom may act (whether individually or collectively, the "Town Representative"), are each hereby authorized to accept, execute and deliver the final Financing Agreement, with any appropriate modifications as described above, and to execute and deliver an appropriate Nonarbitrage Certificate and Tax Compliance Agreement ("Tax Compliance Agreement") as described at this meeting and required under the Financing Agreement, all in forms advised by bond counsel to the Town, and any other instruments in connection therewith as may be required by the VRA, on behalf of the Town, in regard to the issuance, sale and delivery of the Bond by the Town in order to carry out the intent and purposes of this Resolution.

**To such end, it is to be understood that the Town Representative is hereby expressly authorized and directed by the Council to negotiate, approve, and finally confirm all final terms of the Financing Agreement (including all arrangements otherwise contemplated thereunder) on behalf of the Town, and further, upon advice of bond counsel to the Town, to take any and all actions necessary or convenient in order for the Town to issue the Bond to VRA, as Administrator of the Fund, in a timely manner with respect to the Project. Accordingly, the authorization and direction to the Town Representative herein with respect to the issuance, sale and delivery of the Bond shall be broadly and liberally construed, it being the intent under this Resolution to empower the Town Representative with full and complete authority to consummate any and all transactions in furtherance of the purposes hereof.**

3. The Bond shall be a single, fully registered Bond, without coupons, shall be numbered R-1, shall be dated as of the date of its delivery to the VRA, as Administrator of the Fund and initial registered owner thereof, upon payment therefor (the "Closing Date"), shall bear no interest thereon, and shall not exceed the principal amount of \$11,750,000. The Bond shall be substantially in the form attached hereto as Exhibit C. The Bond shall be signed by the Mayor, shall be attested by the Recorder of the Town, and the Town's seal shall be affixed thereto.

If principal disbursements up to the maximum authorized amount of the Bond are not made, the principal amount due on the Bond shall not include such undisbursed amount. Further, unless the Town and the VRA agree otherwise, in writing, until all amounts due under the Bond and the Financing Agreement shall have been paid in full, less than full disbursement of the maximum authorized amount of the Bond shall not postpone the due date of any semi-

annual installment due on the Bond, or change the amount of such installment unless the principal amount due under the Bond is less than the amount of such installment.

The Town Representative is expressly authorized and directed hereunder to finally determine and approve all details of the Bond, including without limitation, the maximum principal amount authorized to be advanced thereunder, the maturity or payment dates and amounts and the final maturity date; *provided, however* that (i) the maximum principal amount authorized to be advanced under the Bond shall not exceed \$11,750,000, (ii) no interest shall accrue on the Bond, and (iii) the final maturity of the Bond shall be no later than December 31, 2038. The principal payment schedule shall be set forth in the form of the Bond (or otherwise attached thereto) and approved by the Town Representative.

If any installment is not paid within ten (10) days after its due date, the Town shall be obligated to pay the registered owner an amount equal to five percent (5%) of the overdue installment. In addition to the payments of principal of the Bond, the Town agrees to pay on demand of the VRA, as Administrator of the Fund, certain Additional Payments (as defined in the Financing Agreement), including the five percent (5.0%) per annum late fee for any overdue installment from the due date of such Additional Payments until the date of payment thereof, all as set forth in the Financing Agreement.

Installments of principal shall be payable in lawful money of the United States of America by check or draft mailed (or other credit transfer being sent) to the registered owner of the Bond at its address as it appears on the registration books of the Registrar, except that the final installment shall be payable upon presentation and surrender of the Bond at the office of the Town Treasurer, who is hereby appointed Registrar.

4. In accordance with requirements of the VRA, the Town hereby covenants to comply with the provisions of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder relating to the exclusion from gross income of interest on the Bond (if any were stated thereon), all as required by the VRA for its purposes and as otherwise set forth in the Tax Compliance Agreement.

5. The Bond shall be a general obligation of the Town for the payment of principal of which its full faith and credit shall be irrevocably pledged and shall be payable from ad valorem taxes without limitation of rate or amount.

The Town, in addition, hereby pledges to the registered owner thereof to secure the payment and performance of the Town's obligations under the Bond and the Financing Agreement, all of the Town's right, title and interest to the revenues and receipts received by the Town from the System, including without limitation, the Project (all as more particularly defined in the Financing Agreement, the "Revenues"), subject to the Town's right to use the Revenues for the payment of the operating and maintenance expenses of the System. The pledge of the Revenues by the Town to secure the Bond shall be valid and binding from and after the Closing Date. The Revenues, as received by the Town, shall be immediately subject to the lien of this pledge without any physical delivery of them or further act. The pledge of the Revenues to secure the payment and performance of the Town's obligations under the Bond shall have

priority over all subsequent obligations and liabilities of the Town. In addition, the lien of the pledge of the Revenues shall be valid and binding against all parties having claims of any kind against the Town regardless of whether such parties have notice thereof. The Town shall establish and collect rates and charges with respect to the System sufficient to pay the principal of the Bond from time to time, all as contemplated under the Business Plan and described in the Financing Agreement.

In order further to secure the payment of the Bond, the Town also agrees to establish and maintain the Reserve Requirement pursuant to VRA's requirements under the Financing Agreement, and hereby pledges the same as additional security for the Town's due payment of the principal of the Bond. To such end, the Council hereby approves, authorizes and directs the payment of the Reserve Requirement to the Fiscal Agent (as defined in the Financing Agreement), all as may be required by VRA, in order for the Town to comply with any closing requirements of VRA, fund the Reserve Requirement as required by VRA, and thereby proceed to closing on the Bond on the Closing Date.

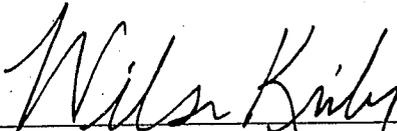
6. The Town Representative and the Town Treasurer, any one or more of whom may act, as may be advisable or otherwise convenient, and such other officers of the Town as may be requested by the VRA from time to time, are hereby authorized and directed to take all proper steps to have the Bond and the Financing Agreement prepared and executed in accordance with their respective terms and to deliver the Bond upon payment therefor pursuant to directions provided by the VRA, and to execute such additional instruments, agreements, documents, and certificates, all as may be requested by legal counsel or bond counsel to the Town or the VRA, or as otherwise required by the Financing Agreement in furtherance of the purposes set forth herein. All such further actions shall be conclusively deemed as having been accepted and approved as authorized herein without any further acts or approvals. All such actions previously taken are hereby ratified and confirmed in their entirety.

7. To the extent necessary or convenient, the Town hereby approves the principal amount of the WQIF Grant, and the Town Representative and such other officers of the Town as may be requested from time to time, are hereby authorized and directed to take all proper steps and further actions, including but not limited to the execution and delivery of documentation in connection therewith, in order that the Town shall obtain such grant monies in connection with the Project.

8. The Recorder and the Town Manager, either of whom may act, are each hereby authorized and directed to see to the filing of a certified copy of this Resolution in the Clerk's Office of the Circuit Court of Clarke County, Virginia.

9. This Resolution shall take effect immediately.

Approved March 25, 2010

  
\_\_\_\_\_  
Wilson Kirby, Mayor  
Town of Berryville, Virginia

- Exhibit A – Commitment Letter*
- Exhibit B – Form of Financing Agreement*
- Exhibit C – Form of Specimen Bond*

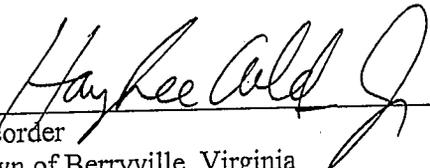
**CERTIFICATE OF VOTES**

Upon election by the Town Council of the Town of Berryville, Virginia, under the provisions of Section 15.2-2601 of the Public Finance Act, among other provisions thereof; and, further, in accordance with the provisions of Section 15.2-2607 thereof, the record of the roll-call vote by the Council on the foregoing Resolution adopted at a duly called special meeting thereof, upon due notice therefor as required under the Town Charter, among other things, is as follows:

NAME	AYE	NAY	ABSTAIN	ABSENT
Wilson Kirby, Mayor	✓			
Harry Lee Arnold, Jr., Recorder	✓			
Lawrence Russell, III	✓			
H. Allen Kitselman, III	✓			
Mary Daniel				✓
Allan W. McWilliams	✓			

Dated: March 25, 2010

[SEAL]

  
 Recorder  
 Town of Berryville, Virginia

# Exhibit A



*Sheryl D. Bailey, Ph.D.*  
Executive Director

March 9, 2010

The Honorable Wilson Kirby  
Mayor  
Town of Berryville, Virginia  
101 Chalmers Court, Suite A  
Berryville, Virginia 22611

**Re: Virginia Water Facilities Revolving Fund  
Town of Berryville, Virginia  
C-515420-02**

Dear Mayor Kirby:

Virginia Resources Authority (the "Authority") is pleased to advise you that the State Water Control Board (the "Board") has authorized an interest-free loan in the aggregate amount of \$11,750,000 (the "Loan") from the Virginia Water Facilities Revolving Fund (the "Fund") to the Town of Berryville, Virginia (the "Town"). An amount up to \$7,326,750 of the Loan (Phase 1) shall be available for disbursement to the Town upon closing of the Loan, and an additional amount up to \$4,423,250 of the Loan (Phase 2) shall be subject to certain conditions being met prior to disbursement to the Town as set forth in the enclosed Financing Agreement (Section 3.3).

The Loan will be for a period of twenty-five (25) years, and will be used to finance an outfall line and a wastewater treatment facility, together with related expenses (the "Project"). The Authority offers to extend to the Town the Loan as stated, subject to the satisfaction of the conditions to purchase the Town's Local Bond as set forth in the enclosed Financing Agreement (Sections 2.1, 3.1, 3.2 and 3.3).

It is understood that the Loan will be secured by a pledge of revenues from the Town's wastewater and water system, a debt service reserve funded with the available funds of the Borrower (as set forth in Section 6.1 of the enclosed Financing Agreement) as well as the full faith and credit of the Town. Unless otherwise agreed by the Authority, the Town's Local Bond evidencing the Loan shall be issued on a parity basis with any pre-existing bonded indebtedness secured by the Town's wastewater and water system revenues.

Loan closings and the disbursement of funds thereunder shall be subject to the availability of funds from the (a) United States Environmental Protection Agency Capitalization Grant under the Water Quality Act of 1987 and (b) Commonwealth of Virginia match grant.

The Local Bond shall be accompanied by an opinion of the Town's bond counsel to the effect that if the Local Bond bore interest, such interest would not be included in gross income

The Honorable Wilson Kirby  
March 9, 2010  
Page 2

for Federal income tax purposes and would not be an item of tax preference for purposes of the Federal alternative minimum income tax (AMT) imposed on individuals and corporations.

Loan closing and the disbursement of funds in connection therewith shall remain subject to satisfaction of any conditions prerequisite thereto established by the Board. The Town shall comply in all respects with all applicable federal, state and local laws, regulations and other requirements relating to or arising out of or in connection with the Project. Where the Authority determines noncompliance of such requirements, the issue shall be referred to the proper governmental authority and/or agency for consultation and/or enforcement action.

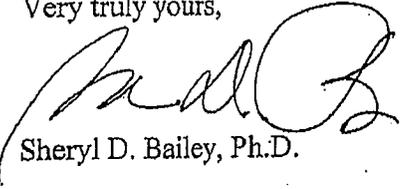
The Authority reserves the right to withdraw or alter the terms of this commitment if, between the date of the Town's loan application and the date of closing, the Town incurs any debt or its financial condition changes in any way deemed material by the Authority in its sole discretion.

The amount of the first disbursement on this Loan must exceed the lesser of \$50,000 or five percent (5.00%) of the principal amount of the Loan. Loan closing will not be set until the first disbursement conforms to this requirement.

If you have any questions concerning the foregoing, please call Jean Bass or Christopher Carey of my staff at 804-644-3100. **If you concur with the terms and conditions herein stated, please acknowledge your acceptance thereof by signing below and returning to me.** Retain a copy for your records.

If Loan closing shall not have occurred by July 31, 2010, it is understood that the Authority reserves the right to modify any of the conditions of this commitment or to withdraw the loan offer.

Very truly yours,

  
Sheryl D. Bailey, Ph.D.

The foregoing terms and conditions are hereby acknowledged and accepted the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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

cc: Keith Dalton, Town Manager  
Carolyn Madden Perry, Esq.  
Walter A. Gills, DEQ  
Eric E. Ballou, Esq.

# Exhibit A



*Sheryl D. Bailey, Ph.D.*  
Executive Director

March 22, 2010

The Honorable Wilson Kirby  
Town of Berryville  
Berryville-Clarke County  
Government Center  
Chalmers Court Suite A  
Berryville, VA 22611101

Dear Mayor Kirby:

Thank you for your letter of March 11, 2010, wherein you outlined the concerns of the Town Council of the Town of Berryville regarding the Virginia Resources Authority's (VRA) proposed terms and conditions for the \$11.75 million Clean Water Revolving Loan Fund (CWRLF) loan.

Berryville's loan of \$11.75 million at zero percent will require an annual debt service of \$470,000 for 25 years starting in mid-year FY2012, with the first full year of debt service occurring in FY2013. Because the Town's current resources are not sufficient to cover the full amount of the debt service, VRA established a two-phase program that immediately provides a loan of \$7,326,750 based on the Town's current resources and provides a way forward to increase the loan to \$11.75 million. Additionally, VRA recommended to the Department of Environmental Quality (DEQ) that the loan terms be increased from 20 to 25 years, which reduced the total annual debt service payment by \$117,500. VRA sought to develop a strategy that would provide a viable and sustainable solution for Berryville. We believed that was accomplished. All parties, the Town of Berryville, DEQ, and VRA, took extraordinary steps to move the project forward.

VRA prides itself on developing innovative but also financially sustainable solutions for communities. Over the past two months, VRA worked continuously to identify an approach that would provide a sustainable financial solution for Berryville.

Concerns expressed in your March 11<sup>th</sup> letter are understandable. Because of the degree of leverage that the loan represents, we have concluded that a two-year debt service reserve is appropriate under the circumstances. VRA is committed to working with Berryville to reduce the reserve requirement as the Town demonstrates that it has implemented a Business Plan to meet its debt service obligations. VRA's willingness to reduce this requirement extends throughout the life of the loan and even before debt service payments begins. In other words, after Berryville implements a Business Plan that demonstrates that the Town has definitive and recurring resources sufficient to meet expenses and debt service requirements, the reserve requirement will be reduced to one-year of debt service. The implemented Business Plan may include expenditure or other

The Honorable Wilson Kirby  
March 22, 2010  
Page 2

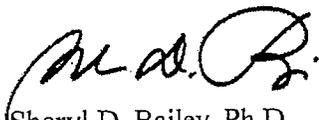
operational adjustments. At the end of the day, however, Berryville must show it has the financial wherewithal to meet its obligations.

The underwriting of the \$11.75 million loan requires a sewer and water revenue pledge along with a full faith and credit pledge. Since all of these resources together underpin the security for the loan, removal of any one of them would understandably require a reduction of the loan amount.

You also expressed in your March 11<sup>th</sup> letter the Town's interest in placing the reserve funds in an institution of your choice. VRA certainly has no objections to this request. VRA will want to assure that the institution holding the fund understands it is accountable to VRA and that the funds held by the institution are for VRA's benefit as security for the loan. Further, VRA would expect regular updates and statements from the institution regarding these funds. The Town of Berryville may procure this service and is advised to keep VRA informed throughout the procurement and selection process.

Again, thank you for sharing with us your concerns. VRA looks forward to working with you in finalizing this important matter.

Sincerely,



Sheryl D. Bailey, Ph.D.  
Executive Director

cc: Berryville Town Council  
Keith Dalton, Town Manager  
Carolyn Perry  
Walter Gills, DEQ  
Eric Ballou, Counsel  
Megan Gilliland, Counsel

# Exhibit B

*CB Draft: 3.9.10*

**FINANCING AGREEMENT**  
dated as of \_\_\_\_\_, 2010

**BETWEEN**

**VIRGINIA RESOURCES AUTHORITY,**  
**as Administrator of the**  
**Virginia Water Facilities Revolving Fund**

**AND**

**TOWN OF BERRYVILLE, VIRGINIA**

**Virginia Resources Authority**  
**Virginia Water Facilities Revolving Fund**

**Loan No. C-515420-02**

**Phase I Funding – \$7,326,750**

**Phase II Funding – \$4,423,250**

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[To Be Updated]

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## FINANCING AGREEMENT

**THIS FINANCING AGREEMENT** is made as of this first day of \_\_\_\_\_, 2010, between the **VIRGINIA RESOURCES AUTHORITY**, a public body corporate and a political subdivision of the Commonwealth of Virginia (the "Authority"), as Administrator of the **VIRGINIA WATER FACILITIES REVOLVING FUND**, and the **TOWN OF BERRYVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "Borrower").

Pursuant to Chapter 22, Title 62.1 of the Code of Virginia (1950), as amended (the "Act"), the General Assembly created a permanent and perpetual fund known as the "Virginia Water Facilities Revolving Fund" (the "Fund"). In conjunction with the State Water Control Board, the Authority administers and manages the Fund. From the Fund, the Authority from time to time makes loans to and acquires obligations of local governments in Virginia to finance or refinance the costs of wastewater treatment facilities within the meaning of Section 62.1-224 of the Act.

The Borrower has requested a loan from the Fund and will evidence its obligation to repay such loan by the Local Bond the Borrower will issue and sell to the Authority, on behalf of the Fund. The Borrower will use the proceeds of the sale of the Local Bond to the Authority to finance that portion of the Project Costs not being paid from other sources, all as further set forth in the Project Budget.

### **ARTICLE I** **DEFINITIONS**

**Section 1.1. Definitions.** The capitalized terms contained in this Agreement and not defined above shall have the meanings set forth below unless the context requires otherwise and any capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Act:

**"Additional Payments"** means the payments required by Section 6.2.

**"Agreement"** means this Financing Agreement between the Authority and the Borrower, together with any amendments or supplements hereto.

**"Authorized Representative"** means any member, official or employee of the Borrower authorized by resolution, ordinance or other official act of the governing body of the Borrower to perform the act or sign the document in question.

**"Available System Cash Flow"** means Revenues less amounts necessary to pay Operation and Maintenance Expense plus transfers from the general fund of the Borrower allocable to or in respect of the System.

**"Board"** means the State Water Control Board.

**"Closing Date"** means the date of the delivery of the Local Bond to the Authority.

**"Commitment Letter"** shall mean the commitment letter from the Authority to the Borrower dated March \_\_, 2010, and all extensions and amendments thereto.

**"Consulting Engineer"** means the engineer or the firm of independent consulting engineers of recognized standing and experienced in the field of sanitary engineering and registered to do business in Virginia which is designated by the Borrower from time to time as the Borrower's consulting engineer in accordance with Section 4.5 in a written notice to the Authority. Such individual or firm shall be subject to the reasonable approval of the Authority.

**"Default"** means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

**"Department"** means the Department of Environmental Quality, created and acting under Chapter 11.1, Title 10.1, of the Code of Virginia, as amended.

**"Event of Default"** shall have the meaning set forth in Section 11.1.

**"Existing Parity Bonds"** means any of the Borrower's bonds, notes or other evidences of indebtedness, as further described on Exhibit F, that on the date of the Local Bond's issuance and delivery were secured by a pledge of Revenues on a parity with the pledge of Revenues securing the Local Bond.

**"Fiscal Agent"** means U.S. Bank National Association.

**"Fiscal Year"** means the period of twelve months established by the Borrower as its annual accounting period.

**"Local Bond"** means the bond in substantially the form attached to this Financing Agreement as Exhibit A issued by the Borrower to the Authority pursuant to this Agreement.

**"Local Bond Proceeds"** means the proceeds of the sale of the Local Bond to the Authority pursuant to this Agreement.

**"Local Resolution"** means all resolutions or ordinances adopted by the governing body of the Borrower approving the transactions contemplated by and authorizing the execution and delivery of this Agreement and the execution, issuance and delivery of the Local Bond.

**"Net Proceeds"** means the gross proceeds from any insurance recovery or condemnation award remaining after payment of attorneys' fees and expenses of the Authority and all other expenses incurred in the collection of such gross proceeds.

**"Operation and Maintenance Expense"** means the costs of operating and maintaining the System determined pursuant to generally accepted accounting principles, exclusive of (i) interest on any debt payable from Revenues; (ii) depreciation and any other items not requiring the expenditure of cash, (iii) any amounts expended for capital replacements, repairs and maintenance not recurring annually or reserves therefor, and (iv) reserves for administration, operation and maintenance occurring in the normal course of business.

**“Opinion of Counsel”** means a written opinion of recognized bond counsel, acceptable to the Authority.

**“Performance Standards”** means the performance standards for the Project as more particularly described in Exhibit H.

**“Phase I Funding”** shall have the meaning set forth in Section 3.1.

**“Phase II Funding”** shall have the meaning set forth in Section 3.1.

**“Prior Bonds”** means any of the Borrower’s bonds, notes or other evidences of indebtedness, as further described in Exhibit F, that on the date of the Local Bond’s issuance and delivery are secured by a pledge of Revenues all or any portion of which is superior to the pledge of Revenues securing the Local Bond.

**“Project”** means the particular project described in Exhibit B, the costs of the construction, acquisition or equipping of which are to be financed or refinanced in whole or in part with the Local Bond Proceeds.

**“Project Budget”** means the budget for the financing or the refinancing of the Project, a copy of which is attached to this Agreement as Exhibit C, with such changes therein as may be approved in writing by the Authority.

**“Project Costs”** means the costs of the construction, acquisition or equipping of the Project, as further described in the Project Budget, and such other costs as may be approved in writing by the Authority, provided such costs are permitted by the Act.

**“Required Reserve”** means the amount of the required reserve described in Section 6.1.

**“Reserve Fund”** means the reserve fund established in Section 6.1.

**“Revenues”** means (i) all rates, fees, rentals, charges, income and money properly allocable to the System in accordance with generally accepted accounting principles or resulting from the Borrower’s ownership or operation of the System, excluding customer and other deposits subject to refund until such deposits have become the Borrower’s property, (ii) the proceeds of any insurance covering business interruption loss relating to the System, (iii) interest on any money or securities related to the System held by or on behalf of the Borrower, and (iv) any other money from other sources pledged by the Borrower to the payment of its Local Bond, excluding, however, amounts in the Reserve Fund.

**“Subordinate Bonds”** means bonds, notes or other evidences of indebtedness of the Borrower secured by a pledge of Revenues expressly made subordinate to the pledge of Revenues to secure the payment of the Local Bond.

**“System”** means all plants, systems, facilities, equipment or property, including but not limited to the Project, owned, operated or maintained by the Borrower and used in connection with the collection or treatment of wastewater and the collection, storage, usage, or treatment of water.

"**Tax Compliance Agreement**" means the Nonarbitrage Certificate and Tax Compliance Agreement, dated the Closing Date, between the Authority and the Borrower, together with any amendments or supplements thereto.

**Section 1.2. Rules of Construction.** The following rules shall apply to the construction of this Agreement unless the context requires otherwise:

(a) Singular words shall connote the plural number as well as the singular and vice versa.

(b) All references in this Agreement to particular Sections or Exhibits are references to Sections or Exhibits of this Agreement unless otherwise indicated.

(c) The headings and table of contents as used in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

## **ARTICLE II**

### **REPRESENTATIONS**

**Section 2.1. Representations by Borrower.** The Borrower makes the following representations as the basis for its undertakings under this Agreement:

(a) The Borrower is a duly created and validly existing "local government" (as defined in Section 62.1-224 of the Act) of the Commonwealth of Virginia and is vested with the rights and powers conferred upon it by Virginia law.

(b) The Borrower has full right, power and authority to (i) adopt the Local Resolution and execute and deliver this Agreement, the Tax Compliance Agreement and the other documents related thereto, (ii) issue, sell and deliver its Local Bond to the Authority, (iii) own and operate the System, (iv) construct, acquire or equip the Project (as described in Exhibit B) and finance and refinance the Project Costs by borrowing money for such purpose pursuant to this Agreement and the issuance of its Local Bond, and (v) carry out and consummate all of the transactions contemplated by the Local Resolution, this Agreement, the Tax Compliance Agreement and the Local Bond.

(c) This Agreement, the Tax Compliance Agreement and the Local Bond were duly authorized by the Local Resolution and are in substantially the same form as presented to the governing body of the Borrower at its meeting at which the Local Resolution was adopted.

(d) All permits, licenses, registrations, certificates, authorizations and approvals required to have been obtained as of the date of the delivery of this Agreement have been obtained for (i) the Borrower's adoption of the Local Resolution, (ii) the execution and delivery by the Borrower of this Agreement, the Tax Compliance Agreement and the Local Bond, (iii) the performance and enforcement of the obligations of the Borrower thereunder, (iv) the acquisition, construction, equipping, occupation, operation and use of the Project, and (v) the operation and use of the System. The Borrower knows of no reason why any such required permits or approvals not

obtained as of the date hereof cannot be obtained as needed.

(e) This Agreement, the Tax Compliance Agreement and the Local Bond have been executed and delivered by duly authorized officials of the Borrower and constitute the legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their terms.

(f) There are not pending nor, to the best of the Borrower's knowledge, threatened against the Borrower, any actions, suits, proceedings or investigations of a legal, equitable, regulatory, administrative or legislative nature, in which a judgment, order or resolution may have a materially adverse effect on the Borrower in its business, assets, condition (financial or otherwise), operations or prospects or in its ability to perform its obligations under this Agreement, the Tax Compliance Agreement or the Local Bond.

(g) There have been no defaults by any contractor or subcontractor under any contract made in connection with the construction or equipping of the Project.

(h) No material adverse change has occurred in the financial condition of the Borrower as indicated in the financial statements, applications and other information furnished to the Authority.

(i) The Borrower owns or has all necessary interests in or access to all real property required to complete the Project in accordance with the Consulting Engineer's certificate referenced in Section 3.2(f).

(j) There is no indebtedness of the Borrower secured by a pledge of Revenues prior to the pledge of Revenues securing the Local Bond.

(j) There is no indebtedness of the Borrower secured by a pledge of Revenues on a parity with the pledge of Revenues securing the Local Bond except any Existing Parity Bonds set forth on Exhibit F.

(k) No Event of Default or Default has occurred and is continuing.

### **ARTICLE III** **ISSUANCE AND DELIVERY OF THE LOCAL BOND**

**Section 3.1. Loan to Borrower and Purchase of the Local Bond.** The Borrower agrees to borrow from the Authority and the Authority agrees to lend to the Borrower, from the Fund, the principal amount equal to the sum of the principal disbursements made pursuant to Section 4.1, but not to exceed \$ \_\_\_\_\_ for the purposes herein set forth. An amount up to \$ \_\_\_\_\_ of the Local Bond shall be immediately available for disbursement to the Borrower (the "Phase I Funding"), and an additional amount up to \$ \_\_\_\_\_ of the Local Bond (the "Phase II Funding") may be available for disbursement to the Borrower upon satisfaction of certain conditions as set forth in Section 3.3 of this Agreement. The Borrower's obligation shall be evidenced by the Local Bond, which shall be in substantially the form of Exhibit A, attached hereto and made a part hereof and delivered to the Authority on the Closing Date. The Local Bond shall be in the original principal

amount of the loan and shall mature and be payable as hereinafter provided.

**Section 3.2. Conditions Precedent to Purchase of the Local Bond.** The Authority shall not be required to make the loan to Borrower and purchase the Local Bond unless the Authority shall have received the following, all in form and substance satisfactory to the Authority:

(a) The Local Bond.

(b) A certified copy of the Local Resolution.

(c) A certificate of appropriate officials of the Borrower as to the matters set forth in Section 2.1 and such other matters as the Authority may reasonably require.

(d) (i) If required by the Department, a contract or contracts for the construction, acquisition and/or equipping of the Project which are acceptable to the Department as to form and content, or (ii) the Consulting Engineer's estimate of the total Project Costs to be financed or refinanced with the Local Bond Proceeds.

Such contracts or estimates must be in an amount and otherwise compatible with the financing plan described in the Project Budget.

(e) A certificate of the Consulting Engineer to the effect that in the opinion of the Consulting Engineer (i) the project will be a part of the System, (ii) the Local Bond Proceeds and funds available from the other sources specified in the Project Budget will be sufficient to pay for, or reimburse the Borrower for the payment of, the estimated Project Costs.

(f) A certificate of the Consulting Engineer as to the date the Borrower is expected to complete the acquisition, construction and equipping of the Project.

(g) Evidence satisfactory to the Authority that all governmental permits or approvals for the Project required to have been obtained as of the date of the delivery of this Agreement have been obtained and a statement of the Consulting Engineer that he knows of no reason why any future required governmental permits or approvals cannot be obtained as needed.

(h) Evidence satisfactory to the Authority that the Borrower has obtained or has made arrangements satisfactory to the Authority to obtain any funds or other financing for the Project as contemplated in the Project Budget.

(i) Evidence satisfactory to the Authority that the Borrower has performed and satisfied all of the terms and conditions contained in this Agreement to be performed and satisfied by it as of such date.

(j) An Opinion of Counsel, substantially in the form of Exhibit D, addressed to the Fund and the Authority.

(k) Evidence satisfactory to the Authority that the Borrower has complied with the insurance provisions set forth in Sections 9.1 and 9.2 hereof.

(l) An original, executed copy of the Tax Compliance Agreement.

(m) Evidence satisfactory to the Authority that the Local Bond will be issued on a parity basis with the Existing Parity Bonds.

(n) Deposit into the Reserve Fund with respect to the Phase I Funding the amount of \$ \_\_\_\_\_ from the Borrower's available funds.

(o) Such other documentation, certificates and opinions as the Authority, the Board or the Department may reasonably require.

**Section 3.3. Conditions Precedent to Disbursement of Phase II Funding.** The Authority agrees that the Borrower may obtain disbursement of the Phase II Funding for the Project, upon the Borrower's satisfaction of the following conditions, to the reasonable satisfaction of the Authority:

(a) (i) The Borrower shall have retained a "Consultant" (as defined below) to assist the Borrower in implementing a detailed business plan that shows in each Fiscal Year the Available System Cash Flow will equal at least 100% of the amount required during the Fiscal Year to pay the principal of the Local Bond, the Additional Payments and all other indebtedness of the Borrower payable from Revenues, including without limitation, indebtedness under leases which are treated as capital leases under generally accepted accounting principles. The Borrower shall submit the business plan to the Authority upon its completion.

(ii) The Borrower agrees that it will, to the extent permitted by law, follow the reasonable recommendations of the Consultant in implementing the business plan referred to in Section 3.3(i) above. So long as the Borrower shall follow such Consultant's recommendations to the extent permitted by law, this Section shall be deemed to have been complied with by the Borrower.

"Consultant" means a firm or firms which are not, and no member, stockholder, director, officer, trustee or employee of which is, an officer, director, trustee or employee of the Borrower, and which is a professional management or engineering consultant of national repute in the field of public utilities engineering and public utilities rates, with the skill and experience necessary to render the services contemplated above. Such firm or firms shall be subject to the reasonable approval of the Authority.

(b) Deposit into the Reserve Fund with respect to the Phase II Funding the amount, if any, then required to satisfy the Required Reserve under Section 6.1 of this Agreement.

#### **ARTICLE IV**

#### **USE OF LOCAL BOND PROCEEDS AND CONSTRUCTION OF PROJECT**

##### **Section 4.1. Application of Proceeds.**

(a) The Borrower agrees to apply the Local Bond Proceeds solely and exclusively to the payment, or to the reimbursement of the Borrower for the payment, of Project Costs and further agrees to exhibit to the Department or the Authority receipts, vouchers, statements, bills of sale or

other evidence of the actual payment of such Project Costs. The Authority shall disburse money from the Fund to or for the account of the Borrower not more frequently than once each calendar month (unless otherwise agreed by the Authority and the Borrower) upon receipt by the Authority (with a copy to be furnished to the Department) of the following:

(1) A requisition (upon which the Authority, the Board and the Department shall be entitled to rely) signed by an Authorized Representative and containing all information called for by, and otherwise being in the form of, Exhibit E to this Agreement;

(2) If any requisition includes an item for payment for labor or to contractors, builders or materialmen,

(i) a certificate, signed by the Consulting Engineer, stating that such work was actually performed or such materials, supplies or equipment were actually furnished or installed in or about the construction of the Project; and

(ii) a certificate, signed by an Authorized Representative, stating either that such materials, supplies or equipment are not subject to any lien or security interest or that such lien or security interest will be released or discharged upon payment of the requisition.

Upon receipt of each such requisition and accompanying certificate or certificates and approval thereof by the Department, the Authority shall disburse Local Bond Proceeds hereunder to or for the account of the Borrower in accordance with such requisition in an amount and to the extent approved by the Department and shall note the date and amount of each such disbursement on a schedule of principal disbursements to be included on the Local Bond. The Authority shall have no obligation to disburse any such Local Bond Proceeds if the Borrower is in default hereunder nor shall the Department have any obligation to approve any requisition if the Borrower is not in compliance with the terms of this Agreement.

(b) The Borrower shall comply with all applicable laws of the Commonwealth of Virginia, including but not limited to, the Virginia Public Procurement Act, as amended, regarding the awarding and performance of public construction contracts. Except as may otherwise be approved by the Department, disbursements shall be held at ninety-five percent (95%) of the maximum authorized amount of the Local Bond to ensure satisfactory completion of the Project. Upon receipt from the Borrower of the certificate specified in Section 4.2 and a final requisition detailing all retainages to which the Borrower is then entitled, the Authority, to the extent approved by the Board and subject to the provisions of this Section and Section 4.2, will disburse to or for the account of the Borrower Local Bond Proceeds to the extent of such approval.

The Authority shall have no obligation to disburse Local Bond Proceeds in excess of the amount necessary to pay for, or reimburse the Borrower for, approved Project Costs. If principal disbursements up to the maximum authorized amount of the Local Bond are not made, principal installments due on the Local Bond shall be reduced in accordance with Section 6.1.

**Section 4.2. Agreement to Accomplish Project.** The Borrower agrees to cause the Project to be acquired, constructed, expanded, renovated or equipped as described in Exhibit B and in accordance with the Project Budget and the plans, specifications and designs prepared by the

Consulting Engineer and approved by the Department. The Borrower shall use its best efforts to complete the Project by the date set forth in the certificate provided to the Authority pursuant to Section 3.2(f). All plans, specifications and designs shall be approved by all applicable regulatory agencies. The Borrower agrees to maintain complete and accurate books and records of the Project Costs and permit the Authority and the Department through their duly authorized representatives to inspect such books and records at any reasonable time. The Borrower and the Authority, with the consent of the Department, may amend the description of the Project set forth in Exhibit B.

When the Project has been completed, the Borrower shall promptly deliver to the Authority and the Department a certificate signed by an Authorized Representative of the Borrower and by the Consulting Engineer stating (i) that the Project has been completed substantially in accordance with this Section, the plans and specifications as amended from time to time, as approved by the Department, and in substantial compliance with all material applicable laws, ordinances, rules and regulations, (ii) the date of such completion, (iii) that all certificates of occupancy or other material permits necessary for the Project's use, occupancy and operation have been issued or obtained, and (iv) the amount, if any, to be reserved for payment of the Project Costs.

**Section 4.3. Permits.** The Borrower, at its sole cost and expense, shall comply with, and shall obtain all permits, consents and approvals required by local, state or federal laws, ordinances, rules, regulations or requirements in connection with the acquisition, construction, equipping, occupation, operation or use of the Project. The Borrower shall, upon request, promptly furnish to the Authority and the Department copies of all such permits, consents and approvals. The Borrower shall also comply with all lawful program or procedural guidelines or requirements duly promulgated and amended from time to time by the Department in connection with the acquisition, construction, equipping, occupation, operation or use of projects financed by the Fund under the Act[, including, but not limited to, those pertaining to the adoption of any requisite sewer use ordinance and compliance with the Performance Standards in the operation of the Project]. The Borrower shall also comply in all respects with all applicable federal, state and local laws and regulations and other requirements relating to or arising out of or in connection with the Project and the funding thereof by the Fund. Where noncompliance with such requirements is determined by the Authority or the Board, the issue shall be referred to the proper governmental authority or agency for consultation or enforcement action.

**Section 4.4. Construction Contractors.** Each construction contractor employed in the accomplishment of the Project shall be required in the construction contract to furnish a performance bond and a payment bond each in an amount equal to one hundred percent (100%) of the particular contract price. Such bonds shall list the Borrower, the Fund, the Authority, the Department and the Board as beneficiaries. Each contractor shall be required to maintain during the construction period covered by the particular construction contract builder's risk insurance, workers' compensation insurance, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Consulting Engineer. Upon request of the Authority, the Department and the Board, the Borrower shall cause each contractor to furnish evidence of such bonds and insurance to the Authority, the Department or the Board.

**Section 4.5. Engineering Services.** The Borrower shall retain a Consulting Engineer to provide engineering services covering the operation of the System and the supervision and inspection of the construction of the Project. The Consulting Engineer shall certify to the Authority and the Department as to the various stages of the completion of the Project as disbursements of

Local Bond Proceeds are requested and shall upon completion of the Project provide to the Authority and the Board the certificates required by Sections 4.1 and 4.2.

**Section 4.6. Borrower Required to Complete Project.** If the Local Bond Proceeds are not sufficient to pay in full the cost of the Project, the Borrower will complete the Project at its own expense and shall not be entitled to any reimbursement therefor from the Fund, the Authority, the Department or the Board or any abatement, diminution or postponement of the Borrower's payments under the Local Bond or this Agreement.

## ARTICLE V

### PLEDGE OF FULL FAITH AND CREDIT AND REVENUES

**Section 5.1. Pledge of Full Faith and Credit.** Under the Local Resolution, the Borrower has pledged its full faith and credit to secure the payment of the principal of the Local Bond of the Borrower and the performance of its obligations under this Agreement. The Borrower agrees, unless other funds are lawfully available and appropriated for timely payment of the Local Bond, to levy an annual tax upon all property subject to local taxation in its jurisdiction sufficient to pay the principal of the Local Bond.

**Section 5.2. Pledge of Revenues.** Subject to the Borrower's right to apply Revenues to the payment of Operation and Maintenance Expense, the Revenues are hereby pledged to the Authority, on behalf of the Fund, to secure the payment of the principal of the Local Bond and the payment and performance of the Borrower's obligations under this Agreement. This pledge shall be valid and binding from and after the execution and delivery of this Agreement. The Revenues, as received by the Borrower, shall immediately be subject to the lien of this pledge without any physical delivery of them or further act. The lien of this pledge of the Revenues is on a parity with the lien of the pledge securing the Existing Parity Bonds. The lien of this pledge shall, subject to the right of the Borrower to apply Revenues to the payment of Operation and Maintenance Expense, have priority over all other obligations and liabilities of the Borrower, and the lien of this pledge shall be valid and binding against all parties having claims of any kind against the Borrower regardless of whether such parties have notice of this pledge.

## ARTICLE VI

### PAYMENTS

**Section 6.1. Payment of Local Bond; Debt Service Reserve Fund.** (a) The Local Bond shall be dated the date of its delivery to the Authority and shall not bear interest on the disbursed principal balance thereof. Commencing \_\_\_\_\_ 1, 20\_\_\_\_, and continuing semi-annually thereafter on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1, principal due under the Local Bond shall be payable in equal installments of \$ \_\_\_\_\_, with the final installment of \$ \_\_\_\_\_ due and payable on \_\_\_\_\_ 1, 20\_\_\_\_, when, if not sooner paid, all amounts due hereunder and under the Local Bond shall be due and payable in full. If principal disbursements up to the maximum authorized amount of the Local Bond are not made, the principal amount due on the Local Bond shall not include such undisbursed amount. However, unless the Borrower and the Authority agree otherwise in writing, until all amounts due hereunder and under the Local Bond shall have been paid in full, less than full disbursement of the maximum authorized amount of the Local Bond shall not

postpone the due date of any semi-annual installment due on the Local Bond, or change the amount of such installment. If any installment of principal of the Local Bond is not paid within ten (10) days after its due date, the Borrower agrees to pay to the Authority a late payment charge in an amount equal to five percent (5.0%) of the overdue installment.

(b) There is hereby established the "Town of Berryville Reserve Fund" (the "Reserve Fund") to be held by the Fiscal Agent in a separate and segregated account. Until the principal of the Local Bond and all amounts payable pursuant to this Agreement have been paid or provided for in full, the Borrower agrees to deposit with the Fiscal Agent the following amounts on the dates provided for below:

(i) With respect to principal on the Local Bond, commencing on the Closing Date, an amount equal to two (2) years of the principal due on the Local Bond for the Phase I Funding from available funds of the Borrower to be deposited in the Borrower's Reserve Fund, and any additional deposits to the Reserve Fund due to the Borrower's receipt of Phase II Funding pursuant to Section 3.3 of this Agreement in an amount equal to two (2) years of the principal due on the Local Bond for the Phase II Funding (the "Required Reserve"). The Required Reserve may be reduced to an amount equal to one (1) year of the principal due on the Local Bond should the Borrower's audited financial statements demonstrate that in each Fiscal Year the Available System Cash Flow will equal at least 100% of the amount required during the Fiscal Year to pay the principal of the Local Bond, the Additional Payments and all other indebtedness of the Borrower payable from Revenues, including without limitation, indebtedness under leases which are treated as capital leases under generally accepted accounting principles. If, for any reason, the Revenues become insufficient to satisfy the foregoing requirement, the Required Reserve shall be restored by the Borrower to an amount equal to two (2) years of the principal due on the Local Bond in six equal monthly payments commencing on the first day of the month following such deficiency in the Required Reserve.

(ii) With respect to any deficiency in the Required Reserve on any \_\_\_\_\_ 1 or \_\_\_\_\_ 1 (either referred to herein as the "Payment Date"), commencing with the first day of the month following such Payment Date and continuing on the first day of each month thereafter until the deficiency is eliminated, an amount equal to one-sixth of the amount of such deficiency.

(c) Without the written consent of the Authority, amounts in the Reserve Fund may be used only to make payments on the principal of the Local Bond to the extent the Borrower has not made timely payment thereunder (whether payment due semi-annually, at maturity or by acceleration), and the Authority may require the Fiscal Agent to transfer amounts in the Reserve Fund to the credit of the holder of the Local Bond if payments on the principal of the Local Bond are not timely made.

(d) Investment earnings on the amount in the Reserve Fund shall be transferred to the Borrower on each Payment Date, unless the Borrower directs the Authority to apply such investment earnings to the principal due on the Local Bond on such Payment Date; provided that if an Event of Default has occurred and is continuing, investment earnings shall be maintained in the Reserve Fund.

(e) The Borrower's obligations to make deposits under subsections (i) and (ii) above and to make payments as scheduled under the Local Bond shall not be discharged in whole or in part by any transfer made by the Fiscal Agent from the Reserve Fund.

**Section 6.2. Payment of Additional Payments.** In addition to the payments of principal of the Local Bond, the Borrower agrees to pay on demand of the Authority the following Additional Payments:

(1) The costs of the Fund, the Authority, the Department or the Board in connection with the enforcement of this Agreement, including the reasonable fees and expenses of any attorneys used by any of them; and

(2) Amounts required to restore the Required Reserve in the Reserve Fund as provided in Section 6.1; and

(2) All expenses, including reasonable attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof.

The Borrower agrees to pay interest on any Additional Payments enumerated in (1) or (2) above not received by the Authority within ten (10) days after demand therefor at a rate of five percent (5.0%) per annum of the overdue installment from its due date until the date it is paid.

## **ARTICLE VII** **PREPAYMENTS**

**Section 7.1. Prepayment of Local Bond.** At its option and after giving at least ten (10) days' written notice to the Authority, the Borrower may prepay the Local Bond at any time, in whole or in part and without penalty. Such written notice shall specify the date on which the Borrower will make such prepayment and whether the Local Bond will be prepaid in full or in part, and if in part, the principal amount to be prepaid. Any such partial prepayment shall be applied against the principal amount outstanding under the Local Bond but shall not postpone the due date of any subsequent payment on the Local Bond, or change the amount of such installment, unless the Borrower and the Authority agree otherwise in writing.

## **ARTICLE VIII** **OPERATION AND USE OF SYSTEM**

**Section 8.1. Ownership and Operation of Project and System.** Except as may be otherwise approved by the Authority or permitted by the terms hereof, the Project and the System at all times shall be owned by the Borrower and shall not be operated or controlled by any other entity or person.

**Section 8.2. Maintenance.** At its own cost and expense, the Borrower shall operate the System in a proper, sound and economical manner and in compliance with all legal requirements, shall maintain the System in good repair and operating condition and from time to time shall make all necessary repairs, renewals and replacements.

**Section 8.3. Additions and Modifications.** At its own expense, the Borrower from time to time may make any additions, modifications or improvements to the System which it deems

desirable and which do not materially reduce the value of the System or the structural or operational integrity of any part of the System, provided that all such additions, modifications or improvements comply with all applicable federal, state and local laws, rules, regulations, orders, permits, authorizations and requirements. All such renewals, replacements, additions, modifications and improvements shall become part of the System.

**Section 8.4. Use of System.** The Borrower shall comply with all lawful requirements of any governmental authority regarding the System, whether now existing or subsequently enacted, whether foreseen or unforeseen or whether involving any change in governmental policy or requiring structural, operational and other changes to the System, irrespective of the cost of making the same.

**Section 8.5. Inspection of System and Borrower's Books and Records.** The Authority and the Department and their duly authorized representatives and agents shall have such reasonable rights of access to the System as may be necessary to determine whether the Borrower is in compliance with the requirements of this Agreement and shall have the right at all reasonable times and upon reasonable prior notice to the Borrower to examine and copy the books and records of the Borrower insofar as such books and records relate to the System.

**Section 8.6. Ownership of Land.** The Borrower shall not construct, reconstruct or install any part of the System on lands other than those which the Borrower owns or can acquire title to or a perpetual easement over, in either case sufficient for the Borrower's purposes, unless such part of the System is lawfully located in a public street or highway or is a main, conduit, pipeline, main connection or facility located on land in which the Borrower has acquired a right or interest less than a fee simple or perpetual easement and such lesser right or interest has been approved by written opinion of counsel to the Borrower as sufficient for the Borrower's purposes.

**Section 8.7. Sale or Encumbrance.** No part of the System shall be sold, exchanged, leased, mortgaged, encumbered or otherwise disposed of except as provided in any one of the following subsections, or as may be otherwise consented and agreed to by the Authority in writing:

(a) The Borrower may grant easements, licenses or permits across, over or under parts of the System for streets, roads and utilities as will not adversely affect the use of the System;

(b) The Borrower may sell or otherwise dispose of property constituting part of the System if it uses the proceeds of such disposition and any other necessary funds to replace such property with property serving the same or a similar function;

(c) The Borrower may not lease property constituting part of the System without the written consent of the Authority; and

(d) In addition to the provisions set forth in (b) above, the Borrower may sell or otherwise dispose of property constituting part of the System; provided, however, (i) no such property shall be sold or otherwise disposed of unless there is filed with the Authority a certificate of the Borrower, signed by an Authorized Representative, stating that such property is no longer needed or useful in the operation of the System, and, if the proceeds of such sale or disposition, together with the aggregate value of any other property sold or otherwise disposed of during the Fiscal Year, shall exceed \$25,000, there shall also be filed with the Borrower and the Authority a certificate of

the Consulting Engineer stating that such property is not necessary or useful to the operation of the System, and (ii) the proceeds to be received from any such sale or disposition shall be applied first to cure any default that may exist in the payment of the principal of the Local Bond, and then to the pro rata prepayment of the Local Bond under Article VII hereof and any Existing Parity Bonds.

**Section 8.8. Collection of Revenues.** The Borrower shall use its best efforts to collect all rates, fees and other charges due to it and shall perfect liens on premises served by the System for the amount of all delinquent rates, fees and other charges where such action is permitted by law. The Borrower shall, to the full extent permitted by law, discontinue and shut off, or cause to be discontinued and shut off, services and facilities of the System, and use its best efforts to cause to be shut off water service furnished otherwise than through the System, to customers of the System who are delinquent beyond any customary grace periods in the payment of rates, fees and other charges due to the Borrower.

**Section 8.9. No Free Service.** The Borrower shall not permit connections with or any use of the System, or furnish any services afforded by the System, without making a charge therefor based on the Borrower's uniform schedule of rates, fees and charges.

**Section 8.10. No Competing Service.** The Borrower shall not provide, grant any franchise to provide or give consent for anyone else to provide, any services which would compete with the System.

**Section 8.11. Mandatory Connection.** The Borrower shall adopt and enforce rules and regulations, consistent with applicable laws, requiring the owner, tenant or occupant of each lot or parcel of land which is served or may reasonably be served by the System and upon which lot or parcel a building shall have been constructed for residential, commercial or industrial use, to connect such building to the System; provided, however, such rules and regulations may permit and provide that any such building already in existence at the time the services of the System became available to the applicable lot or parcel may continue to use a private sewage disposal system approved by the applicable board of health or health officer until such approved private sewage disposal system shall cease to be approved or shall require major repairs to continue to be approved, at which time such building shall be required to connect to the System.

**Section 8.12. Lawful Charges.** The Borrower shall pay when due all taxes, fees, assessments, levies and other governmental charges of any kind whatsoever (collectively, the "Governmental Charges") which are (i) assessed, levied or imposed against the System or the Borrower's interest in it, or (ii) incurred in the operation, maintenance, use and occupancy of the System. The Borrower shall pay or cause to be discharged, or shall make adequate provision to pay or discharge, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon all or any part of the System or the Revenues (collectively, the "Mechanics' Charges"). The Borrower, however, after giving the Authority ten (10) days' notice of its intention to do so, at its own expense and in its own name, may contest in good faith any Governmental Charges or Mechanics' Charges. If such a contest occurs, the Borrower may permit the same to remain unpaid during the period of the contest and any subsequent appeal unless, in the reasonable opinion of the Authority, such action may impair the lien on Revenues granted by this Agreement, in which event, such Governmental Charges or Mechanics' Charges promptly shall be satisfied or secured by posting with the Authority or an appropriate court a bond in form and amount reasonably satisfactory to the Authority. Upon request, the Borrower shall furnish to the Authority

proof of payment of all Governmental Charges and the Mechanics' Charges required to be paid by the Borrower under this Agreement.

[**Section 8.13. Performance Certification.** Upon completion of the Project and its commencement of operation (the "Initiation of Operation"), the Borrower shall promptly notify the Department. If the Borrower fails to so notify the Department, the Department may establish such date. During the year after the Initiation of Operation, the Borrower shall retain a Consulting Engineer to assist in the operation of the Project and the training of operating personnel, to revise the Borrower's operation and maintenance manual, as necessary, and to advise the Borrower with respect to meeting the Performance Standards. One year from the Initiation of Operation, the Borrower shall submit to the Department a certificate as to whether the Performance Standards have been met. If the Department concludes that the Performance Standards have not been met, the Borrower shall submit within thirty (30) days of such date a report detailing (i) the reasons for the failure of the Project to meet the Performance Standards, (ii) the Borrower's plan for undertaking any necessary corrective action to cause the Project to meet the Performance Standards, and (iii) a schedule for completing any such corrective action, including the projected date for the submission of a certificate stating that the Performance Standards have been met. The Borrower shall then undertake such corrective action and any other action necessary to meet the Performance Standards. When the Project has met the Performance Standards, the Borrower shall so certify to the Department. For so long as the Performance Standards have not been met, the Borrower shall retain a Consulting Engineer, unless the Department shall agree otherwise in writing.]

## **ARTICLE IX**

### **INSURANCE, DAMAGE AND DESTRUCTION**

**Section 9.1: Insurance.** Unless the Authority otherwise agrees in writing, the Borrower continuously shall maintain or cause to be maintained insurance against such risks as are customarily insured against by public bodies operating systems similar in size and character to the System, including, without limitation:

(a) Insurance in the amount of the full replacement cost of the System's insurable portions against loss or damage by fire and lightning, with broad form extended coverage endorsements covering damage by windstorm, explosion, aircraft, smoke, sprinkler leakage, vandalism, malicious mischief and such other risks as are normally covered by such endorsements (limited only as may be provided in the standard form of such endorsements at the time in use in Virginia); provided that during the construction of the Project, the Borrower may provide or cause to be provided, in lieu of the insurance in the amount of the full replacement cost of the Project, builders' risk or similar types of insurance in the amount of the full replacement cost thereof. The determination of replacement cost shall be made by a recognized appraiser or insurer selected by the Borrower and reasonably acceptable to the Authority.

(b) Comprehensive general liability insurance with a combined single limit of \$1,000,000 per year against liability for bodily injury, including death resulting therefrom, and for damage to property, including loss of use thereof, arising out of the ownership, maintenance, operation or use of the System.

(c) Unless the Borrower qualifies as a self-insurer under the laws of Virginia,

workers' compensation insurance.

The Authority shall not have any responsibility or obligation with respect to (i) the procurement or maintenance of insurance or the amounts or the provisions with respect to policies of insurance, or (ii) the application of the proceeds of insurance.

The Borrower shall provide no less often than annually and upon the written request of the Authority a certificate or certificates of the respective insurers evidencing the fact that the insurance required by this Section is in force and effect.

**Section 9.2. Requirements of Policies.** All insurance required by Section 9.1 shall be maintained with generally recognized, responsible insurance companies selected by the Borrower and reasonably acceptable to the Authority. Such insurance may be written with deductible amounts comparable to those on similar policies carried with respect to other utility systems of like size and character to the System, and shall contain an undertaking by the insurer that such policy shall not be modified adversely to the interests of, or canceled without at least thirty (30) days' prior notice to, the Authority. If any such insurance is not maintained with an insurer licensed to do business in Virginia or placed pursuant to the requirements of the Virginia Surplus Lines Insurance Law (Chapter 48, Title 38.2, Code of Virginia of 1950, as amended) or any successor provision of law, the Borrower shall provide evidence reasonably satisfactory to the Authority that such insurance is enforceable under Virginia law.

**Section 9.3. Notice of Damage, Destruction and Condemnation.** In the case of (i) any damage to or destruction of any material part of the System, (ii) a taking of all or any part of the System or any right therein under the exercise of the power of eminent domain, (iii) any loss of the System because of failure of title, or (iv) the commencement of any proceedings or negotiations which might result in such a taking or loss, the Borrower shall give prompt notice thereof to the Authority describing generally the nature and extent of such damage, destruction, taking, loss, proceedings or negotiations.

**Section 9.4. Damage and Destruction.** If all or any part of the System is destroyed or damaged by fire or other casualty, and the Borrower shall not have exercised its option to prepay in full the Local Bond pursuant to Article VII, the Borrower shall restore promptly the property damaged or destroyed to substantially the same condition as before such damage or destruction, with such alterations and additions as the Borrower may determine and which will not impair the capacity or character of the System for the purpose for which it then is being used or is intended to be used. The Borrower may apply so much as may be necessary of the Net Proceeds of insurance received on account of any such damage or destruction to payment of the cost of such restoration, either on completion or as the work progresses. If such Net Proceeds are not sufficient to pay in full the cost of such restoration, the Borrower shall pay so much of the cost as may be in excess of such Net Proceeds. Any balance of such Net Proceeds remaining after payment of the cost of such restoration shall promptly be applied to prepayment of the Local Bond pursuant to Article VII.

**Section 9.5. Condemnation and Loss of Title.** If title to or the temporary use of all or any part of the System shall be taken under the exercise of the power of eminent domain or lost because of failure of title, and the Borrower shall not have exercised its option to prepay in full the Local Bond pursuant to Article VII, the Borrower shall cause the Net Proceeds from any such condemnation award or from title insurance to be applied to the restoration of the System to

substantially its condition before the exercise of such power of eminent domain or failure of title. If such Net Proceeds are not sufficient to pay in full the cost of such restoration, the Borrower shall pay so much of the cost as may be in excess of such Net Proceeds. Any balance of such Net Proceeds remaining after payment of the cost of such restoration shall promptly be applied to the prepayment of the Local Bond pursuant to Article VII.

## **ARTICLE X**

### **SPECIAL COVENANTS**

**Section 10.1. Maintenance of Existence.** The Borrower shall maintain its existence as a "local government" (as defined in the Act) of the Commonwealth of Virginia and, without consent of the Authority and the Department, shall not dissolve or otherwise dispose of all or substantially all of its assets or consolidate or merge with or into another entity. Notwithstanding the foregoing, the Borrower may consolidate or merge with or into, or sell or otherwise transfer all or substantially all of its assets to a political subdivision of the Commonwealth of Virginia, and the Borrower thereafter may dissolve, if the surviving, resulting or transferee political subdivision, if other than the Borrower, assumes, in written form acceptable to the Authority and the Department, all of the obligations of the Borrower contained in the Local Bond and this Agreement, and there is furnished to the Authority and the Department an Opinion of Counsel acceptable to the Authority and the Department, subject only to customary exceptions and qualifications, to the effect that such assumption constitutes the legal, valid and binding obligation of the surviving, resulting or transferee political subdivision enforceable against it in accordance with its terms.

**Section 10.2. Financial Records and Statements.** The Borrower shall maintain proper books of record and account in which proper entries shall be made in accordance with generally accepted government accounting standards, consistently applied, of all its business and affairs related to the System. The Borrower shall have an annual audit of the financial condition of the Borrower (and at the reasonable request of the Authority, of the System) made by an independent certified public accountant, within one hundred and eighty (180) days after the end of each Fiscal Year. The Borrower shall furnish to the Authority copies of such report immediately after it is submitted to the Borrower. Such report shall include statements in reasonable detail, certified by such accountant, reflecting the Borrower's financial position as of the end of such Fiscal Year and the results of the Borrower's operations and changes in the financial position of its funds for the Fiscal Year. The Borrower shall also furnish to the Authority a certificate of such accountant to the effect that, during the course of such accountant's regular examination of the Borrower's financial condition, nothing came to such accountant's attention that would constitute an Event of Default or a Default.

**Section 10.3. Certificate as to No Default.** The Borrower shall deliver to the Authority, within one hundred and fifty (150) days after the close of each Fiscal Year, a certificate signed by an Authorized Representative stating that, during such year and as of the date of such certificate, no event or condition has happened or existed, or is happening or existing, which constitutes an Event of Default or a Default, or if such an event or condition has happened or existed, or is happening or existing, specifying the nature and period of such event or condition and what action the Borrower has taken, is taking or proposes to take to rectify it.

**Section 10.4. Additional Indebtedness.** Without the prior written consent of the Authority, the Borrower shall not incur any indebtedness or issue any bonds, notes or other evidences of indebtedness secured by a pledge of Revenues.

**Section 10.5. Reserved.**

**Section 10.6. Further Assurances.** The Borrower shall to the fullest extent permitted by law pass, make, do, execute, acknowledge and deliver such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming the rights, Revenues and other funds pledged or assigned by this Agreement, or as may be required to carry out the purposes of this Agreement. The Borrower shall at all times, to the fullest extent permitted by law, defend, preserve and protect the pledge of the Revenues and other funds pledged under this Agreement and all rights of the Authority, the Department and the Board under this Agreement against all claims and demands of all persons.

**Section 10.7. Other Indebtedness.** The Borrower agrees to pay when due all amounts required by any other bonded indebtedness and to perform all of its obligations in connection therewith.

**Section 10.8. Assignment by Borrower.** The Borrower may not assign its rights under this Agreement without the prior written consent of the Authority and the Department. If the Borrower desires to assign its rights under this Agreement to another "local government" (as defined in the Act), the Borrower shall give notice of such fact to the Authority and the Department. If the Authority and the Department consent to the proposed assignment, the Borrower may proceed with the proposed assignment, but such assignment shall not become effective until the Authority and the Department are furnished: (i) an assumption agreement in form and substance satisfactory to the Authority and the Department by which the assignee agrees to assume all of the Borrower's obligations under the Local Bond and this Agreement, and (ii) an Opinion of Counsel to the assignee, subject to customary exceptions and qualifications, that the assumption agreement, the Local Bond and this Agreement constitute legal, valid and binding obligations of the assignee enforceable against the assignee in accordance with their terms and that the assignment and assumption comply in all respects with the provisions of this Agreement. Notwithstanding the foregoing, the assignment of the rights of the Borrower under the Local Bond and this Agreement or the assumption of the obligations thereunder by the assignee shall in no way be construed as releasing the Borrower's obligations.

**Section 10.9. Tax Covenants.** The Borrower agrees that it will not directly or indirectly use or permit the use of any of the proceeds of the Local Bond or any other of its funds in such manner as would, or enter into, or allow any other person or entity to enter into, any arrangement, formal or informal, that would, or take or omit to take any other action that would, if the Local Bond bore interest, cause such interest to be includable in gross income for federal income tax purposes or to become a specific item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. The Borrower agrees to perform all duties imposed upon it by the Tax Compliance Agreement. Insofar as the Tax Compliance Agreement imposes duties and responsibilities on the Borrower, including the payment of any arbitrage rebate in respect of the Local Bond, it is specifically incorporated by reference into this Agreement.

**Section 10.10. Continuing Disclosure Obligations.** (a) For purposes of this section, the following terms and phrases shall have the following meaning:

“Annual Financial and Operating Information” with respect to any Fiscal Year for the Borrower, means the following:

(i) the financial statements (consisting of at least a Statement of Net Assets, Statements of Revenues, Expenses and Changes in Net Assets and a Statement of Cash Flows) of the Borrower;

(ii) all financial statements must be (A) prepared annually in accordance with applicable law and generally accepted accounting principles in effect from time to time consistently applied and (B) audited by an independent certified public accountant or firm of such accountants in accordance with generally accepted auditing standards as in effect from time to time; or, if audited financial statements are not available, financial statements will be filed as may be required by the Rule (as defined herein); and

(iii) operating data of the type set forth in Exhibit F.

“Dissemination Agent” shall mean any person, reasonably acceptable to the Authority, whom the Borrower contracts in writing to perform its obligations as provided in subsection (b) of this section.

“Leveraging Bonds” means the bonds and other evidences of indebtedness issued and sold by the Authority pursuant to the Virginia Resources Authority Act, Chapter 21, Title 62.1 of the Code of Virginia (1950), as amended, the Act, and any successor provisions of law, including without limitation the bonds and other evidences of indebtedness issued by the Authority under the Master Indenture of Trust dated as of October 15, 1999, between the Authority and U.S. Bank National Association, as trustee, as supplemented and amended, and the Subordinate Financing Trust Indenture dated as of June 1, 2005, between the Authority and U.S. Bank National Association, as trustee, as supplemented and amended, or any successors thereto.

“Local Government” shall have the meaning set forth in Section 62.1-199 of the Code of Virginia of 1950, as amended.

“Local Obligations” shall mean any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, leases or any other evidences of indebtedness of a Local Government evidencing a loan made by the Authority to a Local Government from the Fund or the proceeds of Leveraging Bonds.

“Make Public” or “Made Public” shall have the meaning set forth in subsection (c) of this Section.

“Material Local Government” shall mean a Local Government that satisfies a set of objective criteria established by the Authority at the time of sale of each series of Leveraging Bonds and based on the level of participation of each Local Government in the aggregate outstanding principal amount of all Local Obligations. For all Leveraging Bonds currently outstanding as of the date of this Agreement, a Material Local Government is any Local Government whose aggregate

outstanding principal amount of Local Obligations represents twenty percent (20%) or more of the aggregate outstanding principal amount of all Local Obligations.

"Rule" means Rule 15c2-12, as it may be amended from time to time, under the Securities Exchange Act of 1934 and any similar rules of the SEC relating to disclosure requirements in the offering and sale of municipal securities, all as in effect from time to time.

"SEC" means the U.S. Securities and Exchange Commission.

(b) The Borrower shall Make Public or cause to be Made Public:

(1) Within 270 days after the end of the Borrower's Fiscal Year (commencing with the Fiscal Year in which the Closing Date occurs), Annual Financial and Operating Information for such Fiscal Year as of the end of which the Borrower constitutes a Material Local Government. Annual Financial and Operating Information may be set forth in the documents Made Public or may be included by reference in a document Made Public to any document previously filed with the SEC. If the document referred to is a final official statement within the meaning of the Rule, then it must be available from the Municipal Securities Rulemaking Board ("MSRB").

(2) In a timely manner, notice of any failure by the Borrower to Make Public or cause to be Made Public Annual Financial and Operating Information pursuant to the terms of part (1) of this subsection.

(c) For purposes of this Section, information and notices shall be deemed to have been Made Public if transmitted to the Authority and to the MSRB for publication on its Electronic Municipal Market Access system ("EMMA").

(d) The Borrower shall also notify the Authority as promptly as possible upon becoming aware of any of the following events that may from time to time occur with respect to the Local Bond:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on any credit enhancement maintained with respect to the Local Bond reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions or events affecting the tax-exempt status of the interest on the Local Bond;
- (7) modifications to rights of the holders of the Local Bond;
- (8) bond calls;

- (9) defeasances;
- (10) release, substitution, or sale of property securing repayment of the Local Bond; and
- (11) rating changes.

(e) Notwithstanding anything in this Agreement to the contrary, the Borrower need not comply with the provisions of subsections (a) through (d) above unless and until the Authority has notified the Borrower that it satisfied the objective criteria for a Material Local Government as of the end of the Authority's immediately preceding fiscal year.

(f) The obligations of the Borrower under this Section will terminate upon the redemption, defeasance (within the meaning of the Rule) or payment in full of all of the Leveraging Bonds.

(g) The Borrower may modify its continuing disclosure obligations in this Section without the consent of holders of the Leveraging Bonds provided that this Section as so modified complies with the Rule as it exists at the time of modification. The Borrower shall within a reasonable time thereafter send to the Authority and the MSRB through EMMA a description of such modification(s).

(h) (1) If the Borrower fails to comply with any covenant or obligation set forth in this Section, any holder (within the meaning of the Rule) of Leveraging Bonds then Outstanding may, by notice to the Borrower, proceed to protect and enforce its rights and the rights of the holders by an action for specific performance of the Borrower's covenants or obligations set forth in this Section.

(2) Notwithstanding anything herein to the contrary, any failure of the Borrower to comply with any obligation regarding Annual Financial and Operating Information specified in this Section (i) shall not be deemed to constitute an Event of Default under this Agreement and (ii) shall not give rise to any right or remedy other than that described in part (h)(1) of this Section.

(i) The Borrower may from time to time disclose certain information and data in addition to that required under this Section. Notwithstanding anything in this Agreement to the contrary, the Borrower shall not incur any obligation to continue to provide, or to update, such additional information or data.

(j) The Borrower may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligation to Make Public the Annual Financial and Operating Information, and may discharge any such Agent, with or without appointing a successor Dissemination Agent.

**Section 10.11. Davis-Bacon Act.** The Borrower agrees to comply with the Davis-Bacon Act and related acts, as amended, with respect to the Project and require that all laborers and mechanics employed by contractors and subcontractors for the Project shall be paid wages at rates not less than those prevailing on projects of a similar character in the County, as determined by the United States

Secretary of Labor in accordance with Title 40, Chapter 31, Subchapter IV of the United States Code, as amended.

**ARTICLE XI**  
**DEFAULTS AND REMEDIES**

**Section 11.1. Events of Default.** Each of the following events shall be an "Event of Default":

(a) The failure to pay when due any payment of principal due hereunder or to make any other payment required to be made under the Local Bond or this Agreement, including payments required to restore the balance in the Reserve Fund to the Required Reserve;

(b) The Borrower's failure to perform or observe any of the other covenants, agreements or conditions of the Local Bond or this Agreement and the continuation of such failure for a period of thirty (30) days after the Authority gives the Borrower written notice specifying such failure and requesting that it be cured, unless the Authority shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice is correctable but cannot be corrected within the applicable period, the Authority will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Default is corrected;

(c) Any warranty, representation or other statement by or on behalf of Borrower contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement or in connection with the issuance and sale of the Local Bond is false or misleading in any material respect;

(d) The occurrence of a default by the Borrower under the terms of any Subordinate Bonds or Existing Parity Bonds, or any general obligation indebtedness of the Borrower to which it has pledged its full faith and credit, and the failure to cure such default or obtain a waiver thereof within any period of time permitted thereunder;

(e) An order or decree shall be entered, with the Borrower's consent or acquiescence, appointing a receiver or receivers of the System or any part thereof or of the Revenues thereof, or if such order or decree, having been entered without the Borrower's consent or acquiescence, shall not be vacated, discharged or stayed on appeal within sixty (60) days after the entry thereof;

(f) Any proceeding shall be instituted, with the Borrower's consent or acquiescence, for the purpose of effecting a composition between the Borrower and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from Revenues; or

(g) Any bankruptcy, insolvency or other similar proceeding shall be instituted by or against the Borrower under any federal or state bankruptcy or insolvency law now or hereinafter in effect and, if instituted against the Borrower, is not dismissed within sixty (60) days after filing.

**Section 11.2. Notice of Default.** The Borrower agrees to give the Authority prompt written notice if any order, decree or proceeding referred to in Section 11.1(e), (f) or (g) is entered or instituted against the Borrower or of the occurrence of any other event or condition which constitutes a Default or an Event of Default immediately upon becoming aware of the existence thereof.

**Section 11.3. Remedies on Default.** Whenever any Event of Default referred to in Section 11.1 shall have happened and be continuing, the Authority shall, in addition to any other remedies provided herein or by law, including rights specified in Section 62.1-228 of the Act, have the right, at its option without any further demand or notice, to take one or both of the following remedial steps:

(a) Declare immediately due and payable all payments due or to become due on the Local Bond and under this Agreement, and upon notice to the Borrower, the same shall become immediately due and payable by the Borrower without further notice or demand; and

(b) Take whatever other action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due on the Local Bond and under this Agreement or to enforce any other of the Fund's, the Authority's, the Department's or the Board's rights under this Agreement or to enforce performance by the Borrower of its covenants, agreements or undertakings contained herein or in the Local Bond.

**Section 11.4. Delay and Waiver.** 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 or 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 under this Agreement shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereto.

**Section 11.5. State Aid Intercept.** The Borrower acknowledges that the Authority may take any and all actions available to it under the laws of the Commonwealth of Virginia, including Section 62.1-216.1 of the Virginia Code, to secure payment of the principal of the Local Bond, if payment of such principal shall not be paid when the same shall become due and payable.

## **ARTICLE XII MISCELLANEOUS**

**Section 12.1. Successors and Assigns.** This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**Section 12.2. Amendments.** The Authority and the Borrower, with the written consent of the Department, shall have the right to amend from time to time any of the terms and conditions of this Agreement, provided that all amendments shall be in writing and shall be signed by or on behalf of the Authority and the Borrower.

**Section 12.3. Liability of Officials, etc.** In the absence of fraud, no present or future director, official, officer, employee or agent of the Borrower shall be liable personally in respect of this

Agreement or the Local Bond or for any other action taken by such individual pursuant to or in connection with the financing provided for in this Agreement or the Local Bond.

**Section 12.4. Applicable Law.** This Agreement shall be governed by the applicable laws of Virginia.

**Section 12.5. Severability.** If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the illegality or invalidity of such clause, provision or Section shall not affect the remainder of this Agreement which shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained in this Agreement. If any agreement or obligation contained in this Agreement is held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the Authority and the Borrower, as the case may be, only to the extent permitted by law.

**Section 12.6. Notices.** Unless otherwise provided for herein, all demands, notices, approvals, consents, requests, opinions and other communications under the Local Bond or this Agreement shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage prepaid, addressed as follows:

**Fund:** Virginia Water Facilities Revolving Fund  
c/o Virginia Resources Authority  
1111 East Main Street, Suite 1920  
Richmond, VA 23219  
Attention: Executive Director

**Authority:** Virginia Resources Authority  
1111 East Main Street, Suite 1920  
Richmond, VA 23219  
Attention: Executive Director

**Department and Board:** State Water Control Board  
Department of Environmental Quality  
P. O. Box 1105 Richmond, VA 23218  
Attention: Executive Director

**Borrower:** Town of Berryville, Virginia

\_\_\_\_\_  
Berryville, Virginia \_\_\_\_\_  
Attention: Town Manager

A duplicate copy of each demand, notice, approval, consent, request, opinion or other communication given by any party named in this Section shall also be given to each of the other parties named. The Authority, the Department, the Board and the Borrower may designate, by notice given hereunder, any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications shall be sent or persons to whose attention the same shall be directed.

**Section 12.7. Right to Cure Default.** If the Borrower shall fail to make any payment or to perform any act required by it under the Local Bond or this Agreement, the Authority without prior notice to or demand upon the Borrower and without waiving or releasing any obligation or default, may (but shall be under no obligation to) make such payment or perform such act. All amounts so paid by the Authority and all costs, fees and expenses so incurred shall be payable by the Borrower as an additional obligation under this Agreement, together with interest thereon at the rate of interest of five percent (5.0%) per annum until paid. The Borrower's obligation under this Section shall survive the payment of the Local Bond.

**Section 12.8. Headings.** The headings of the several articles and sections of this Agreement are inserted for convenience only and do not comprise a part of this Agreement.

**Section 12.9. Term of Agreement.** This Agreement shall be effective upon its execution and delivery, provided that the Local Bond shall have been previously or simultaneously executed and delivered. Except as otherwise specified, the Borrower's obligations under the Local Bond and this Agreement shall expire upon payment in full of the Local Bond and all other amounts payable by the Borrower under this Agreement.

**Section 12.10. Commitment Letter.** The Commitment Letter is an integral part of this Agreement and shall survive closing hereunder.

**Section 12.11. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

*[Signature Page Follows]*

WITNESS the following signatures, all duly authorized.

**VIRGINIA RESOURCES AUTHORITY**

By: \_\_\_\_\_  
Sheryl D. Bailey, Ph.D.  
Executive Director

**TOWN OF BERRYVILLE, VIRGINIA**

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

RECEIVED  
MAY 11 1981

**EXHIBIT A**

**FORM OF LOCAL BOND  
TOWN OF BERRYVILLE, VIRGINIA  
C-515420-02**

[To come from Borrower's Bond Counsel]

**EXHIBIT B**

**PROJECT DESCRIPTION  
TOWN OF BERRYVILLE, VIRGINIA  
C-515420-02**

The Project includes the financing of an outfall line and a wastewater treatment facility, together with related costs and expenses.

**EXHIBIT C**

**PROJECT BUDGET  
TOWN OF BERRYVILLE, VIRGINIA  
C-515420-02**

<b>Cost Category</b>	<b>Project Cost</b>
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<b>TOTALS</b>	
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**EXHIBIT D**

**OPINION OF BORROWER'S BOND COUNSEL  
TOWN OF BERRYVILLE, VIRGINIA  
C-515420-02**

[To come from Borrower's Bond Counsel]

**EXHIBIT E**

**FORM OF REQUISITION  
TOWN OF BERRYVILLE, VIRGINIA  
C-515420-02**

[LETTERHEAD OF BORROWER]

[Date]

Walter A. Gills, Program Manager  
Construction Assistance Program  
Water Division  
Department of Environmental Quality  
P. O. Box 1105  
Richmond, Virginia 23218

Re: Town of Berryville, Virginia  
Loan No. C-515420-02

Dear Mr. Gills:

This requisition, Number \_\_\_\_\_, is submitted in connection with the Financing Agreement dated as of \_\_\_\_\_ 1, 2010 (the "Financing Agreement"), between the Virginia Resources Authority, as Administrator of the Virginia Water Facilities Revolving Fund (the "Authority"), and the Town of Berryville, Virginia (the "Borrower"). Unless otherwise defined in this requisition, all capitalized terms used herein shall have the meaning set forth in Article I of the Financing Agreement. The undersigned Authorized Representative of the Borrower hereby requests disbursement of loan proceeds under the Financing Agreement in the amount of \$ \_\_\_\_\_ for the purposes of payment or reimbursement of the Project Costs as set forth in Schedule 1 attached hereto.

Attached hereto are invoices relating to the items for which payment is requested.

The undersigned certifies that (a) the amounts requested by the requisition will be applied solely and exclusively to the payment, or to the reimbursement of the Borrower for the payment, of Project Costs, and (b) any materials, supplies or equipment covered by this requisition are not subject to any lien or security interest or such lien or security interest will be released upon payment of the requisition.

To the extent the Borrower will not apply the amounts requested by this Requisition to reimburse itself for the payment of Project Costs already paid, the Borrower will spend such amounts on Project Costs within five banking days following the Borrower's receipt of such amounts.

This requisition includes an accompanying Certificate of the Consulting Engineer as to the performance of the work.

Very truly yours,

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

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

Attachments .....

cc: DEQ Regional Engineer (with all attachments)

CERTIFICATE OF THE CONSULTING ENGINEER  
FORM TO ACCOMPANY REQUEST FOR DISBURSEMENT

This Certificate is being executed and delivered in connection with Requisition Number \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, submitted by the Town of Berryville, Virginia (the "Borrower"), pursuant to the Financing Agreement dated as of \_\_\_\_\_ 1, 2010 (the "Financing Agreement") between the Virginia Resources Authority, as Administrator of the Virginia Water Facilities Revolving Fund (the "Authority"), and the Borrower. Capitalized terms used herein shall have the same meanings set forth in Article I of the Financing Agreement.

The undersigned Consulting Engineer for the Borrower hereby certifies to the Authority that, insofar as the amounts covered by this Requisition include payments for labor or to contractors, builders or materialmen, such work was actually performed or such materials, supplies or equipment were actually furnished to or installed in the construction portion of the Project.

\_\_\_\_\_  
[Consulting Engineer]

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

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



**EXHIBIT F**

**PRIOR BONDS AND EXISTING PARITY BONDS  
TOWN OF BERRYVILLE, VIRGINIA  
C-515420-02**

[To Be Confirmed by Borrower's Bond Counsel]

**Prior Bonds:**

None

**Existing Parity Bonds:**

None

**EXHIBIT G**

**OPERATING DATA  
TOWN OF BERRYVILLE, VIRGINIA  
C-515420-02**

*Description of Borrower.* A description of the Borrower including a summary of its form of government, budgetary processes, its management and officers and a summary description of the System.

*Debt.* A description of the terms of the Borrower's outstanding tax-supported and revenue debt including a historical summary of such outstanding debt; a summary of authorized but unissued debt; a summary of legal debt margin; a summary of overlapping debt; and a summary of annual debt service on outstanding debt as of the end of the preceding Fiscal Year. The Annual Financial Information should also include (to the extent not shown in the latest audited financial statements) a description of contingent obligations as well as pension plans administered by the Borrower and any unfunded pension liabilities.

*Financial Information and Operating Data.* Financial information and operating data respecting the Borrower including a description of revenues and expenditures for its major funds and a summary of its tax policy, structure and collections as of the end of the preceding Fiscal Year. Financial information for the System as of the end of the preceding Fiscal Year, including a description of revenues and expenditures, largest users, a summary of rates, fees and other charges of the System, and a historical summary of debt service coverage.

**EXHIBIT H**

**PERFORMANCE STANDARDS  
TOWN OF BERRYVILLE, VIRGINIA  
C-515420-02**

[To be Inserted, if Applicable.]

R-1

**Exhibit C**

**UNITED STATES OF AMERICA  
COMMONWEALTH OF VIRGINIA  
TOWN OF BERRYVILLE, VIRGINIA  
GENERAL OBLIGATION REVENUE BOND**

**SERIES 2010**

*RECEIVED  
MAY 11 2010*

**MATURITY DATE**

\_\_\_\_\_ 1, 20\_\_

**DATED DATE**

March \_\_, 2010

**REGISTERED OWNER:** VIRGINIA RESOURCES AUTHORITY, AS ADMINISTRATOR  
OF VIRGINIA WATER FACILITIES REVOLVING FUND

**PRINCIPAL AMOUNT:** ELEVEN MILLION SEVEN HUNDRED FIFTY THOUSAND  
DOLLARS (\$11,750,000)

The TOWN OF BERRYVILLE, VIRGINIA (the "Town"), for value received, promises to pay, solely from the sources described below and pledged to the payment of this Bond, to the registered owner of this Bond or legal representative, the principal sum stated above, which shall not accrue interest, together with Additional Payments, if any, all as set forth in the Financing Agreement (described below).

This Bond shall be payable as follows. Beginning on \_\_\_\_\_ 1, 2012, and continuing semi-annually thereafter on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1 for the term hereof, equal installments of principal shall be payable each in the amount of \$ \_\_\_\_\_, with the final installment thereof being due and payable on \_\_\_\_\_ 1, 20\_\_\_\_, when, if not sooner paid, all amounts due hereunder and under the Financing Agreement (defined below) shall be due and payable in full, upon presentation and surrender of this Bond at the office of the Town Treasurer, who is appointed as Registrar.

Installments shall be payable in lawful money of the United States of America by check or draft (or other credit transfer) mailed or otherwise sent to the registered owner of this Bond at its address as it appears on the registration books of the Registrar, except that the final installment shall be payable at the office of the Registrar upon presentation and surrender of this Bond. If any installment hereunder is not paid within ten (10) days of its due date, the Town agrees to pay to the registered owner on demand a late payment charge in an amount equal to five percent (5.0%) of the overdue installment, as well as any amount(s) due under the Financing Agreement, dated as of March 1, 2010 (the "Financing Agreement"), between the Town and Virginia Resources Authority ("VRA"), as Administrator of Virginia Water Facilities Revolving Fund (the "Fund"). Such late payment charge is further described in the Financing Agreement in Section 6.1 thereof and shall be due and payable by the Town on demand by VRA, as Administrator of the Fund. VRA, as Administrator of the Fund, shall deliver to the Town a certificate as to the amount of such late payment charge due hereunder setting forth in reasonable detail the basis for the late payment charge and the manner of calculation thereof. The certificate shall be conclusive (absent manifest error) as to the amount of late payment charge set forth therein.

In addition, pursuant to Section 6.2 of the Financing Agreement, the Town shall pay certain Additional Payments (as further described in the Financing Agreement) on the demand and at the direction of VRA, as Administrator of the Fund. Specific reference is hereby made to such provision set forth in the Financing Agreement for the terms and conditions under which Additional Payments, if any, shall be due and payable hereunder by the Town.

The issuance of this Bond has been duly authorized by the Town Council (the "Council") of the Town by a Resolution duly adopted on March 25, 2010 (the "Authorizing Resolution"), among other official actions in accordance with law, including the holding of a duly noticed public hearing therefor on March 9, 2010. This Bond is being issued in order to provide permanent financing of all or any portion of the costs to (i) acquire, construct, and equip a new wastewater treatment facility and a lab and control building therefor to be located on the existing site for the Town's wastewater treatment facilities at 362 Parshall Road, Berryville, Virginia, including various upgrades and capital improvements in connection therewith, (ii) acquire, construct and equip a new approximately four-mile effluent discharge line to be constructed along a new route generally along and in the public right-of-way for State Route 7 to the Shenandoah River, and (iii) pay issuance costs in connection with this Bond (collectively, the "Project").

This Bond shall be a general obligation of the Town for the payment of principal on which its full faith and credit shall be irrevocably pledged and shall be payable from ad valorem taxes without limitation of rate or amount.

In addition, the Town hereby pledges to the registered owner hereof to secure the payment and performance of the Town's obligations hereunder and under the Financing Agreement, all of the Town's right, title and interest to the revenues and receipts received by the Town from the System, including without limitation, the Project (all as more particularly defined in the Financing Agreement, the "Revenues"), subject to the Town's right to use the Revenues for the payment of the operating and maintenance expenses of the System. The pledge of the

Revenues by the Town to secure this Bond shall be valid and binding from and after the Closing Date. The Revenues, as received by the Town, shall be immediately subject to the lien of this pledge without any physical delivery of them or further act. The pledge of the Revenues to secure the payment and performance of the Town's obligations under this Bond shall have priority over all subsequent obligations and liabilities of the Town. In addition, the lien of the pledge of the Revenues shall be valid and binding against all parties having claims of any kind against the Town regardless of whether such parties have notice thereof.

Pursuant to the Authorizing Resolution, among other things, the Town has agreed to establish and collect rates and charges with respect to the System sufficient to pay the principal of this Bond from time to time, all as described in the Financing Agreement and otherwise contemplated under the Authorizing Resolution.

In order further to secure the payment of this Bond, the Town has established and shall maintain the Reserve Requirement pursuant to the requirements of the Financing Agreement, and hereby pledges the same as additional security for the Town's due payment of the principal of this Bond.

This Bond is issued pursuant to the terms of the Authorizing Resolution, the Financing Agreement, the Constitution and statutes of the Commonwealth of Virginia, including the Public Finance Act of 1991, Chapter 26, Title 15.2 of the Code of Virginia of 1950, as amended, and the Town Charter. The obligations of the Town under this Bond shall terminate when all amounts due and to become due pursuant to this Bond and the Financing Agreement have been paid in full.

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Transfer of this Bond may be registered upon books maintained for that purpose at the office of the Registrar. Prior to due presentment for registration of transfer, the Registrar shall treat the registered owner as the person exclusively entitled to payment of principal and the exercise of all other rights and powers of the owner.

No notation is required to be made on this Bond of the payment of any principal on normal semi-annual payment dates, as set forth above. **HENCE, THE FACE AMOUNT OF THIS BOND MAY EXCEED THE PRINCIPAL SUM REMAINING OUTSTANDING AND DUE HEREUNDER.**

At its option and after giving at least ten (10) days' written notice to VRA, as Administrator of the Fund, the Town may prepay this Bond at any time, in whole or in part and without penalty. Such written notice shall specify the date on which the Town will make such prepayment and whether this Bond will be prepaid in full or in part, and if in part, the principal amount to be prepaid. Any such partial prepayment shall be applied against the principal amount outstanding under this Bond but shall not postpone the due date of any subsequent payment on this Bond, or change the amount of such installment, unless the Town and VRA, as Administrator of the Fund, agree otherwise in writing.

It is hereby certified and recited that all acts, conditions and things required by the Constitution and statutes of the Commonwealth of Virginia and the Town Charter to happen, exist or be performed precedent to the issuance of this Bond have happened, exist or been performed in due time, form and manner as so required, and that the indebtedness evidenced by this Bond is within every debt and other limit prescribed by the Constitution and statutes of the Commonwealth of Virginia.

**IN WITNESS WHEREOF**, the Council of the Town of Berryville, Virginia, has caused this Bond to be signed by the Mayor, the Town's seal to be affixed and attested by the signature of the Recorder of the Town, and this Bond to be dated the Dated Date set forth above.

[Seal]

**TOWN OF BERRYVILLE, VIRGINIA**

By: \_\_\_\_\_  
Mayor  
Town of Berryville, Virginia

ATTEST:

\_\_\_\_\_  
Recorder  
Town of Berryville, Virginia







**5. WQIF Grant Agreement Amendments**

Mr. Dalton said that this item was addressed in the Bond Resolution.

**Adjourn**

There being no further business, on motion by Council member Russell, seconded by Council member McWilliams and passed, the Council meeting was adjourned at 4:43 p.m.

\_\_\_\_\_  
Wilson Kirby, Mayor

\_\_\_\_\_  
Harry Lee Arnold, Jr., Recorder