

**For “in-person” meetings, persons who are not on the agenda but wish to address the governing body must register to speak at least 15 minutes prior to the start of the meeting. For virtual meetings, the Mayor will canvas attendees for those wishing to speak. Time limits will be imposed. Requests for copies of documents related to agenda items must be made in writing at least 24 hours in advance of the meeting, not during the meeting. NOTE: Council members are elected to represent citizens of the Corporation of Shepherdstown, please contact them regarding any questions or comments you may have about the agenda items. This Council follows Robert’s Rules of Order (Revised).**

**TOWN COUNCIL MEETING AGENDA**

Tuesday, August 10, 2021

6:30 p.m.

Community Club

102 East German Street

**MASK WEARING IS STRONGLY RECOMMENDED**

1. Call to order
2. Approval of Town Council Meeting Minutes of July 13, 2021
3. **Public Comment Period**
  - a. Persons who have registered to address Town Council.
4. **Visitors**
  - a. Bondy Shay Gibson, Jefferson County Schools Superintendent - Resolution
5. **Public Hearings**
  1. Consideration of and action on first reading of a Bond Ordinance authorizing the issuance of the Corporation of Shepherdstown Water Revenue Bonds, Series 2021, in an original aggregate principal amount not to exceed \$1,250,000 to finance a portion of the costs of the acquisition, construction and equipping of certain additions, betterments and improvements to the waterworks system of the Corporation of Shepherdstown, including without limitation the renovation and improvement of the water treatment plant and related facilities.

Acceptance and approval of the Commitment Letter from Jefferson Security Bank relating to the Corporation of Shepherdstown Water Revenue Bonds, Series 2021, and authorization and direction for the Mayor to sign such Commitment Letter on behalf of the Corporation of Shepherdstown.

- a. First readings of the following ordinances:
- **An Ordinance to Amend Chapter 1 of Title 7 of the Code of Shepherdstown, West Virginia, Section 7-111 Relating to Malicious Mischief**
  - **An Ordinance Amending and Reenacting Chapter 2 of Title 7 of the Code of Shepherdstown, West Virginia, and Section 7-201: "Prohibited Acts A; Penalties", Section 7-202: Prohibited Acts B: Penalties", Section 7-203: "Penalties Under Other Laws", Section 7-204: "Bar to Prosecution", Section 7-205: "Conditional Discharge for First Offense of Possession", Section 7-206: "Second or Subsequent Offenses", Section 7-207: "Prohibited Acts- Withholding Information from Practitioner; Additional Controlled Substances; Penalties," Relating to Criminal Offenses Involving Controlled Substances**
  - **An Ordinance to Amend Chapter 4 of Title 7 of the Code of Shepherdstown, West Virginia, Section 7-402: "Trespass in Structure and Conveyance", Section 7-403: "Trespass on Property other than Structure or Conveyance", and Section 7-405: "Trespass on State Government Property; Aiding and Abetting: Penalties", Relating to Criminal Offenses for Trespass**
  - **An Ordinance to Adopt Chapter 6, Title 7 of the Code of Shepherdstown in Accordance with the Code of the State of West Virginia**
  - **An Ordinance to Amend Chapter 3 of Title 10 of the Code of Shepherdstown, West Virginia, Section 10:310, Relating to Obstructing, Fleeing from or making false Statements to a Police Officer**
  - **An Ordinance to Amend Section 12C-502 of Chapter 5, Title 12C of the Code of Shepherdstown Pertaining to Driving Under the Influence of Alcohol, Controlled Substances, or Drugs, and to Add Section 12C-502b to Chapter 5, Title 12C of the Code of Shepherdstown to Establish Standards for Participation in the Motor Vehicle Alcohol Test and Lock Program**

- **An Ordinance to Amend Section 12C-503 of Chapter 5, Title 12C of the Code of Shepherdstown Pertaining to Reckless Driving**
- **An Ordinance to Amend Section 12C-601 of Chapter 6, Title 12C of the Code of Shepherdstown Pertaining to Speed Limitations Generally**

#### **6. Unfinished Business**

- ROUNDTABLE DISCUSSION – Business Owners – to be held in September? Are other Council members interested in helping?
- IT EQUIP FOR STREAMING MEETINGS FROM TOWN HALL – Status
- LED lights

#### **7. Old Business**

- Website redesign update – Draft RFP

#### **8. New Business**

- Planning Commission Member Appointments/Re-appointments– Roger
- Munro, Chris Cafiero, Terry Fulton
- Historic Landmarks Commission Member Appointments/Re-appointments – Nicole Saunders/Meske, Carmen Slater
- Event Requests:
  - Shepherd University Homecoming Parade event request
  - Panhandle Free Narcan Day

#### **9. Mayor's Report**

#### **10. Reports of Committees**

##### **A. Finance Committee**

1. No July meeting
2. Financial Reporting
3. Recommendations: NONE

**B. Parking Committee**

1. No July meeting
2. Recommendations: NONE

**C. Police Committee**

1. No July meeting
2. Recommendations: NONE

**D. Public Works Committee**

1. Meeting minutes of July 2021
2. Recommendations: NONE

**E. Parks and Recreation Committee**

1. No July meeting
2. Recommendations: NONE

**F. Grants Committee**

1. Meeting minutes of August 2021
2. Recommendations: NONE

**11. Report of Commissions and Boards**

**A. Tree Commission**

1. Meeting minutes of July 2021
2. Recommendations: NONE

**B. Water and Sanitary Board**

1. Meeting minutes of July 2021
2. Recommendations: NONE

**C. Historic Landmarks Commission**

1. Meeting minutes of July 2021



2. Recommendations: NONE

**D. Planning Commission**

1. Meeting minutes of July 2021
2. Recommendations: NONE

**E. Board of Appeals**

**Shepherdstown Town Council Meeting Minutes**  
**Tuesday, July 13, 2021**  
**Community Club – 102 East German St.**  
**6:30 p.m.**  
**DRAFT**

**Present:** Jim Auxer (Mayor), Lori Robertson (Recorder), Chris Stroeck, Marty Amerikaner, Jenny Haynes, Cheryl Roberts, and Jim Ford.

**Absent:** None

**Staff:** Town Clerk Amy Boyd and Public Works Director Frank Welch.

**Visitors:** Mark Cucuzzella, Tabitha Johnston, Nancy Strine, Lindsay Cobb, Chase McKittrick, Austin Slater, Jan Hafer, Kenny Lowe, Dr. Christine Wimer, Susie Wimer, Steve Pearson, Sean Feigo, and Dennis Jarvis.

**Agenda Items 1 and 2-Call to order/approval of Town Council Minutes (vote required):**

Call to order by Mayor Auxer at 6:30 pm.

Approval of the Town Council Meeting Minutes of June 8, 2021

**C. Stroeck- move to approve the Town Council Meeting Minutes of June 8 2021 with a correction to pg. 3 Agenda Item 9 – Mayor’s Report, b under Mayor - C. Stroeck to reflect the addition of “he asked to be recused and put in the Zoom waiting room”. Second by J. Haynes with the correction. No objections noted.**

**Agenda Item 3 – Public Comment Period:**

- a. Persons who have registered to address Town Council.

**Agenda Item 4 - Visitors:**

Visitor’s comments, if any, are logged in under the specific agenda items.

- a. Dr. Wimer – Jefferson County Foundation (JCP)  
Prior to the presentation and discussion, at 6:33 p.m. C. Stroeck asked to be recused and left the meeting room.

Dr. Wimer – handed out materials that the council had not had time to review. She stated that there are flaws in the permit and she is addressing the change in the operating parameters regarding coal vs. natural gas. Rockwool wants to change its use to natural gas but keep the technology to use coal if needed. The WVDEP approved the changes requested by Rockwool. Her group would like for Rockwool to use natural gas and remain within the parameters of that use, and would to see a new permit issued by the WVDEP.

L. Robertson asked why JCP wasn't successful with WVDEP?

Dr. Wimer - WVDEP cited no further action was required from Rockwool, and that they can continue with the current limitations. JCP disagrees and is requesting a letter of support from the council.

J. Ford – there is no reason to think there is a reason for them (Rockwool) to exceed their limits.

Dr. Wimer – JCP wants them to do better with the technology based on the Clean Air Act. JCP wants Shepherdstown support for Rockwool to use natural gas in their production, not coal. Rockwool has a duty to inform.

Mayor – have JCP author a letter outlining these concerns for Rockwool to use the best technology for the cleanest air and to enforce the laws.

**M. Amerikaner – move to have Dr. Wimer author a letter to enforce the law getting it to the Mayor, have our attorney review the letter, and then have the Mayor sign it. Second by J. Haynes. No objections noted.**

**7 p.m. after all discussion and vote, C. Stroeck returned t the meeting room.**

b. Katie Thompson/Mark Cucuzella – Freedom's Run

M. Cucuzzella – this is Freedom's Run 13<sup>th</sup> year. Have simplified the road usage starting at Midway field on Shepherd University, going across the bridge to the canal. The kid's run will stay in town for safety reasons starting at 11 a.m. and will run primarily on the sidewalks.

**C. Roberts – move to approve Freedom's Run October 16, 2021. Second by J. Ford. No objections noted.**

c. Ken Lowe – Shepherdstown Elementary School

K. Lowe – has questions about the new elementary and middles schools being built. Currently, students can walk to these schools. He

went in front of the school board and made a presentation suggesting the Shepherdstown Elementary School move into the current Shepherdstown Middle School building. They should build the new middle school first, and then retrofit it so the elementary school can move in. It would save a lot of money in regards to water and sewer hook ups. Bonds are already committed for the elementary school, but this can be changed. Shepherdstown is a destiny site. He is asking council to sign a resolution stating that the middle school be repurposed.

M. Cucuzzella – there is a study showing that kids don't/can't walk to school anymore contributing to obesity.

J. Ford – do others agree with the resolution, if so whom? He would like council to hear from the school board and invite the public.

**J. Ford – move to put this on August Town Council agenda and invite the Jefferson County School Board and the public. Second by M. Amerikaner. No objections noted.**

d. Nancy Strine – Home Consortium

N. Strine – we do this every three years. The City of Martinsburg is the grantee for housing for low-income households. A recent COVID grant was in Shepherdstown. She is requesting we sign the 2-page resolution stating that we are still willing to participate. The mayor read the resolution.

**L. Robertson – move to sign the resolution for the Home Consortium. Second by C. Roberts. No objections noted.**

**Agenda Item 5 – Public Hearings:**

- a. Consideration of and action on first reading of a Bond Ordinance authorizing the issuance of the Corporation of Shepherdstown Water Revenue Bonds, Series 2021, in an original aggregate principal amount not to exceed \$1,250,000 to finance costs of the acquisition, construction, and equipping of certain additions, betterments, and improvements to the waterworks system of the Corporation of Shepherdstown, including without limitation the renovation and improvement of the water treatment plant and related facilities.

Mayor – the low bidder withdrew his bid. This will go back to the Water Board - no vote tonight.

**Agenda Item 6 – Unfinished Business:**

- a. None

**Agenda Item 7 – Old Business:**

- a. Website redesign update – Draft REP  
J. Ford – the website is close to being done.

**Agenda Item 8 – New Business:**

- a. None

**Agenda Item 9 – Mayor's Report:**

- Broadband – the town is collaborating with Jefferson County Commission to place small antennae on our water tanks, hopefully by July 11, 2021.
- Shepherdstown Library – timeframe –  
The bid should be accepted by this Friday  
2 weeks for new shoring and bracing for safety and the integrity of the building.  
The masonry will start soon.  
A moving company will place the library contents in an onsite container.

J. Ford – attended the Jefferson County Visitor's Board meeting – the marketing plan for Shepherdstown is really impressive – it will include the DC area targeting 50,000 running in the Washington Post.

**Agenda Item 10 – Reports of Committees:**

**A. Finance Committee:**

- 1. Meeting minutes of June 2021
- 2. Finance Reporting:
- 3. Recommendations
  - a. None

**B. Parking Committee:**

- 1. No June meeting

2. Recommendations: None

**C. Police Committee:**

1. No June meeting
2. Recommendations: None
3. Police Officer Interviews

Mayor – interviews and background checks are being conducted now.

**D. Parks and Recreation Committee:**

1. Meeting minutes of June 2021 – not available
2. Recommendations:
  - a. None

Cheryl Roberts – next Bookmark in the Park is July 24 at 11 a.m. at Riverfront Park. Other events include: Cullison Park – Aug. 20 – 5:30 p.m., and Bane Harris Park – Sept 12 – 2 p.m.

Also, Friends of Shepherdstown Library (FOSL) has an event July 17, 1:30 p.m. at Morgan's Grove Park. There is a survey going out from P&R inquiring about use of the parks.

**E. Public Works Committee:**

1. Meeting minutes of May 2021
2. Recommendations:
  - None

Mayor – LED lights – there are 4 conversions around town looking for input. So far the input has been positive. The LED Task Force is working with First Energy.

The locations are:

Church/E. German  
Sage Place/E. German  
King St./German  
King St./Washington

**F. Path Advisory Committee**

1. No meeting in June
2. Recommendations:
  - a. None

- b. L. Robertson – the Temporary Construction Easement (TCE) Forms have been sent to us in preparation of reaching out to landowner's along Rt. 480. We are looking for funding for the grant match.

**G. Grant Committee**

- 1. Meeting minutes of June 2021
  - a. Appointment of new member

**Lori Robertson – move to approve Matt Jividen to the Grants committee. Second by J. Ford. No objections noted.**
  - b. C. Stroeck – they are waiting to hear about the first block grant. There is a special council meeting to move forward on updating the tree inventory (the last one was in 2003) and AED's for the police department vehicles. (The Shepherdstown Fire Department will conduct the training)

**Agenda item 11 – Report of Commissions, Authority and Boards:**

**A. Historic Landmarks Commission:**

- 1. Meeting minutes of June 2021
- 2. Recommendations:
  - a. None

Mayor – Dr. Keith Alexander to provide training July 20, 6 p.m. at the Community Club. Topic – maintaining and protecting our historical standards based on the Secretary of Interior Standards for Rehabilitation.

**B. Planning Commission:**

- 1. Meeting minutes of June 2021 – not available at this time
- 2. Recommendations:
  - a. None

**C. Tree Commission**

- 1. Meeting minutes of June 2021
- 2. Recommendations: None

L. Robertson – thanks to Frank Welch for maintaining Tree City USA for the 15<sup>th</sup> year. The commission has been keeping the trees trimmed with all of the rain.

**D. Water and Sanitary Board:**

- 1 –Meeting minutes of June 2021
- 2 – Recommendations:
  - a. None

**E. Board of Appeals**

1. No meeting scheduled

**L. Robertson – move to adjourn at 7:57 p.m. Second by J. Haynes. No objections noted.**

Draft Minutes respectfully submitted by L. Robertson, Recorder for the Corporation of Shepherdstown.



## RESOLUTION

**WHEREAS**, the Jefferson County School Board has purchased real estate on Flowing Springs Road where it wishes to relocate first the Shepherdstown Elementary School and then the Shepherdstown Middle School;

**WHEREAS**, numerous others in our community disagree with this plan and propose an alternative plan that a new middle school be constructed on the Flowing Springs Road property, that the existing middle school be repurposed and renovated to become the elementary school and the existing elementary school real estate be sold;

**WHEREAS**, The Corporation of Shepherdstown, Mayor, and Council agree with this alternative plan and wishes to register its support.

**NOW, THEREFORE**, it is resolved that the Council hereby endorses and recommends to the Jefferson County School Board that they adopt the alternative plan set forth above.

**IN TESTIMONY WHEREOF**, the Mayor and Town Recorder have hereunto subscribed their names on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Mayor, Jim Auxer

\_\_\_\_\_  
Town Recorder, Lori Robertson

**CORPORATION OF SHEPHERDSTOWN**  
**WATER REVENUE BONDS**  
**SERIES 2021**

**BOND ORDINANCE**

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**CORPORATION OF SHEPHERDSTOWN  
WATER REVENUE BONDS  
SERIES 2021**

**BOND ORDINANCE**

ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATERWORKS SYSTEM OF THE CORPORATION OF SHEPHERDSTOWN, INCLUDING CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATER TREATMENT PLANT, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CORPORATION OF SHEPHERDSTOWN OF WATER REVENUE BONDS, SERIES 2021, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000.00); DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE SERIES 2021 BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITIES FOR THE HOLDERS OF THE SERIES 2021 BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT

BE IT ENACTED AND ORDAINED BY THE COUNCIL OF THE CORPORATION OF SHEPHERDSTOWN:

## ARTICLE I

### STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

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

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

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

B. The Issuer presently owns and operates a public waterworks system. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired, constructed and equipped certain additions, betterments and improvements to the Issuer’s existing waterworks system, including the additions, betterments and improvements to the water treatment plant described in Exhibit A hereto (collectively, the “Project”) (the Issuer’s existing waterworks system, the Project and any further additions, extensions, betterments and improvements thereto are herein called the “System”) in accordance with the plans and specifications prepared by Ghosh Engineers, Consulting Engineers, Inc., which plans and specifications have heretofore been filed with the Issuer.

C. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the Series 2021 Bonds and all Sinking Funds, Reserve Accounts and other payments provided for herein, all as such terms are hereinafter defined.

D. It is further deemed necessary for the Issuer to issue its Water Revenue Bonds, Series 2021 (the “Series 2021 Bonds”) in the aggregate principal amount of not more than \$1,250,000, to permanently finance the costs of acquisition, construction and equipping of the Project. Said costs shall be deemed to include, but not be limited to, the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Series 2021 Bonds prior to and during construction and acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Series 2021 Bonds Reserve Account; engineering, financing and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2021 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof,

provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2021 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project, as hereinafter defined.

E. The estimated maximum cost of the acquisition and construction of the Project and the issuance of the Series 2021 Bonds is \$2,747,300, \$1,009,300 of which will be paid from funds of the Issuer available for such purpose, \$488,000 of which will be paid from the Depreciation Account for the System and the remainder will be obtained from the sale of the Series 2021 Bonds described above.

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

G. It is in the best interest of the Issuer that its Series 2021 Bonds be issued and sold to the Jefferson Security Bank (the "Purchaser") pursuant to the terms and provisions of the commitment letter dated July 28, 2021, from the Purchaser to the Issuer (the "Commitment Letter"), the acceptance of the Commitment Letter being authorized hereby.

H. There are outstanding obligations of the Issuer which will rank on parity with the Series 2021 Bonds as to liens and sources of and security for payment, which obligations are designated and have the lien positions, together with the Series 2021 Bonds, as follows:

<u>Designation</u>	<u>Lien Position</u>
Water Revenue Bonds, Series 2003A (West Virginia DWTRF Program), dated June 13, 2003, issued in the original aggregate principal amount of \$699,459 (the "Series 2003A Bonds")	First Lien
Water Revenue Bonds, Series 2003B (West Virginia DWTRF Program), dated June 13, 2003, issued in the original aggregate principal amount of \$1,300,541 (the "Series 2003B Bonds")	First Lien
Water Revenue Bonds, Series 2012 (West Virginia Infrastructure Fund), dated July 19, 2012, issued in the original aggregate principal amount of \$4,000,000 (the "Series 2012 Bonds")	First Lien
Water Revenue Bonds, Series 2017, dated June 15, 2017, issued in the original aggregate principal amount of \$2,650,000 (the "Series 2017 Bonds" and	First Lien



together with the Series 2003A Bonds,  
the Series 2003B Bonds and the  
Series 2012 Bonds, the “Prior Bonds”)

The Series 2021 Bonds

First Lien

I. The Series 2021 Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2021 Bonds, the Issuer will obtain (a) a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met, and (b) the written consent of the registered owner of the Series 2003A Bonds, the Series 2003B Bonds and the Series 2012 Bonds to the issuance of the Series 2021 Bonds on a parity with the Prior Bonds. Except for the Prior Bonds the Issuer has no other bonds, notes, or other obligations secured by or payable from revenues or assets of the System.

J. The Issuer has complied with all requirements of West Virginia law relating to authorization of the planning, development, design, acquisition, construction and operation of the Project and the System and issuance of the Series 2021 Bonds or will have so complied prior to issuance of any thereof, including, among other things, either the approval of the Project and the obtaining of a Certificate of Public Convenience and Necessity from the Public Service Commission of West Virginia (the “PSC”) by final order, the time for rehearing and appeal of which has expired prior to the issuance of the Series 2021 Bonds or has been waived by all necessary parties or a determination that such approval and certificate of the PSC are not required.

K. The Issuer will not permit, at any time, any of the proceeds of the Series 2021 Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Series 2021 Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended (the “Code”).

L. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2021 Bonds.

M. The Series 2021 Bonds will not be federally guaranteed within the meaning of the Code.

N. All things necessary to make the Series 2021 Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the Issuer according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Series 2021 Bonds, will be timely done and duly performed.

O. The adoption of this Ordinance, the acquisition, construction and equipping of the Project, the financing of the Costs of the of the Project with proceeds of the Series 2021 Bonds and the execution and issuance of the Series 2021 Bonds, subject to the terms thereof, will not result in any breach of, or constitute default under, any instrument to which the Issuer is a party or by which it may be bound or affected.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2021 Bonds by those who shall be the registered owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the registered owners of any and all of such Bonds, as the case may be, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

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

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

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

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

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

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

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

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

“Bonds” means, collectively, the Series 2021 Bonds, the Prior Bonds and, where appropriate, any bonds on a parity with the Series 2021 Bonds authorized to be issued hereunder or by another resolution of the Issuer.

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

“Certificate of Determinations” means the Certificate of Determinations to be executed by the Mayor in connection with the Series 2021 Bonds as further provided in the Supplemental Resolution.

“Closing Date” means the date upon which there is an exchange of the Series 2021 Bonds for the advance of the principal of the Series 2021 Bonds by the Purchaser.

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

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

“Commitment Letter” means, collectively, the Commitment Letter of the Purchaser dated July 28, 2021, and all amendments thereto.

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

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

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

“Depreciation Account” means the Depreciation Account established or continued by Section 5.01 hereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Mayor” means the Mayor of the Issuer.

“Net Proceeds” means the face amount of the Series 2021 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 2021 Bonds Reserve Account, if any. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the

investment of proceeds of the Series 2021 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

“Operating Expenses” means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Depository Bank and Paying Agent (all as herein defined), payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that “Operating Expenses” does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

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

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

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

“Paying Agent” means the Commission or such other entity designated as such for the Series 2021 Bonds by the Issuer.

“Prior Bonds” means the Series 2003A Bonds, the Series 2003B Bonds, the Series 2012 Bonds and the Series 2017 Bonds.

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

“Private Business Use” means use directly or indirectly in a trade or business carried on by a natural person, including all persons “related” to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons “related” to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code,



including, without limitation, giving due regard to “incidental use,” if any, of the proceeds of the issue and/or proceeds used for “qualified improvements,” if any.

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

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

“Purchase Price,” for the purpose of computation of the yield of the Series 2021 Bonds, has the same meaning as the term “issue price” in Section 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Series 2021 Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers), at which price a substantial amount of the Series 2021 Bonds of each maturity is sold or, if the Series 2021 Bonds are privately placed, the price paid by the first buyer of the Series 2021 Bonds or the acquisition cost of the first buyer. “Purchase Price,” for purposes of computing yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Series 2021 Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Series 2021 Bonds.

“Purchaser” means Jefferson Security Bank.

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

(a) Government Obligations;

(b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Deposit and time accounts (including accounts evidenced by time certificates of deposit, demand or time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable

coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

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

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

“Rebate Fund” means the fund created pursuant to Section 4.01 hereof.

“Recorder” means the Recorder of the Governing Body.

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

“Registrar” means the Bond Registrar.

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

“Reserve Accounts” means the Series 2021 Bonds Reserve Account and the respective reserve accounts for the Prior Bonds.

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

“Series 2003 Bonds” means the Series 2003A Bonds and the Series 2003B Bonds.

“Series 2003A Bonds” means the Issuer’s Water Revenue Bonds, Series 2003A (West Virginia DWTRF Program), dated June 13, 2003, issued in the original aggregate principal amount of \$699,459.

“Series 2003B Bonds” means the Issuer’s Water Revenue Bonds, Series 2003B (West Virginia DWTRF Program), dated June 13, 2003, issued in the original aggregate principal amount of \$1,300,541.

“Series 2012 Bonds” means the Issuer’s Water Revenue Bonds, Series 2012 (West Virginia Infrastructure Fund), dated July 19, 2012, issued in the original aggregate principal amount of \$4,000,000.

“Series 2017 Bonds” means the Issuer’s Water Revenue Bonds, Series 2017, dated June 15, 2017, issued in the original aggregate principal amount of \$2,650,000.

“Series 2021 Bonds” or “Series 2021 Bond” means the not to exceed \$1,250,000 in original principal amount of Water Revenue Bonds, Series 2021 authorized hereby.

“Series 2021 Bonds Construction Trust Fund” means the Series 2021 Bonds Construction Trust Fund established by Section 5.01 hereof.

“Series 2021 Bonds Reserve Account” means the Series 2021 Bonds Reserve Account established in the Series 2021 Bonds Sinking Fund pursuant to Section 5.02 hereof.

“Series 2021 Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2021 Bonds in the then concurrent or any succeeding fiscal year.

“Series 2021 Bonds Sinking Fund” means the Series 2021 Bonds Sinking Fund established pursuant to Section 5.02 hereof.

“Sinking Funds” means the Series 2021 Bonds Sinking Fund and the respective sinking funds for the Prior Bonds.

“State” means the State of West Virginia.

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

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

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



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

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

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

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

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

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

## ARTICLE II

### AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project; Acceptance, Approval and Ratification of Commitment Letter. There is hereby authorized, ratified and affirmed the acquisition, construction and equipping of the Project, at an estimated maximum cost, including without limitation issuance costs, of \$2,747,300, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The foregoing Project costs, including without limitation costs associated with the issuance of the Series 2021 Bonds, shall be paid with \$1,009,300 from funds of the Issuer available for such purpose, \$488,000 from the Depreciation Account for the System and the remainder will be obtained from the proceeds of the Series 2021 Bonds. The proceeds of the Series 2021 Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has entered into or will enter into contracts for the acquisition, construction and equipping of the Project, which are in an amount and otherwise compatible with the financing plan submitted to the Purchaser. The Commitment Letter is hereby accepted and approved, the execution thereof by the Mayor on behalf of the Issuer is hereby authorized and directed and all prior acts taken in connection with the Commitment Letter are hereby ratified and approved in all respects.

### ARTICLE III

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

Section 3.01. Authorization of Series 2021 Bonds. Subject and pursuant to the provisions hereof, the Water Revenue Bonds of the Issuer, to be known as "Water Revenue Bonds, Series 2021," are hereby authorized to be issued in the original aggregate principal amount not to exceed \$1,250,000, the exact principal amount to be as set forth in the Series 2021 Bond executed by the Mayor, for the purpose of financing the costs of the acquisition, construction and equipping of the Project.

Section 3.02. Description of Bonds. The Series 2021 Bonds shall initially be issued in single form, No. R-1, fully registered to Jefferson Security Bank and shall be dated on the date of delivery. The Bond shall bear interest from date, payable monthly with an interest rate not to exceed 3% per annum, with a term not to exceed sixteen (16) years from the Closing Date, the exact interest rate and term to be as set forth in the Series 2021 Bonds executed by the Mayor and shall be sold at the par value thereof. The Bond shall be subject to prepayment, at the option of the Issuer, and shall be payable as provided in the bond form hereinafter set forth.

Section 3.03. Negotiability, Registration, Transfer and Exchange of Series 2021 Bonds. The Series 2021 Bonds shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but the Series 2021 Bonds, and the right to the principal of, and stated interest on, the Series 2021 Bonds, may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the applicable Series 2021 Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Registrar.

Whenever a Series 2021 Bond shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new bond or bonds in authorized denominations, for a like aggregate principal amount. The Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Registrar with respect to such transfer.

No registration of transfer of a Series 2021 Bond shall be permitted to be made after the 15th day next preceding any installment payment date on the Series 2021 Bonds.

Section 3.04. Registrar. Jefferson Security Bank or other Registrar designated by the Issuer shall keep or cause to be kept at the office of the Registrar the Bond Register for the registration and transfer of the Series 2021 Bonds, and, upon presentation for such purpose, the Registrar shall register the Series 2021 Bond initially issued pursuant hereto and register the transfer, or cause to be registered, on such Bond Register, the transfer of the Series 2021 Bonds as hereinbefore provided.

Section 3.05. Execution of Bond. The Series 2021 Bonds shall be executed in the name of the Issuer by the Mayor and its corporate seal shall be affixed thereto and attested by the Recorder.

Section 3.06. Mutilated, Destroyed, Stolen or Lost Series 2021 Bond. In case a Series 2021 Bond shall become mutilated, destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new bond of like tenor as the Series 2021 Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Series 2021 Bond or in lieu of and substitution for the Series 2021 Bond destroyed, stolen or lost, and upon the holder of the Series 2021 Bond furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Series 2021 Bond so surrendered shall be canceled and held for the account of the Issuer. If the Series 2021 Bond shall have matured or be about to mature, instead of issuing a substitute Series 2021 Bond the Issuer may pay the same, and, if such bond be destroyed, stolen or lost, without surrender thereof.

Section 3.07. Series 2021 Bonds not to be Indebtedness of the Members of the Governing Body of the Issuer. The Series 2021 Bonds shall not be or constitute an indebtedness of the members of the Governing Body of the Issuer but shall be payable solely from the Net Revenues and from funds in the Series 2021 Bonds Reserve Account.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Prior Bonds; Series 2012 Bonds, Series 2017 Bonds and Series 2021 Bonds to be Secured by Gross Revenues after Payment of Series 2003 Bonds. The payment of the debt service of all the Series 2021 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2021 Bonds and the Prior Bonds and to make the payments into all funds and accounts either existing or hereinafter established are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2021 Bonds and Prior Bonds as the same become due. In addition to the foregoing, the unexpended proceeds of the Series 2021 Bonds are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2021 Bonds as the same become due. Notwithstanding the foregoing, upon the payment in full of the Series 2003 Bonds, the payment of the debt service of all of the Series 2012 Bonds, the Series 2017 Bonds and the Series 2021 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System.

Section 3.09. Form of Series 2021 Bonds. Subject to the provisions hereof, the text of the Series 2021 Bonds and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or by any ordinance or resolution enacted or adopted after the date of adoption hereof and prior to the issuance thereof:

[Form of Series 2021 Bonds]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
CORPORATION OF SHEPHERDSTOWN  
WATER REVENUE BOND  
SERIES 2021

No. R-1

\$[1,250,000]

THE CORPORATION OF SHEPHERDSTOWN, a municipal corporation and political subdivision of the State of West Virginia in Jefferson County of said State (the "Issuer"), for value received, promises to pay to the order of Jefferson Security Bank (the "Purchaser"), or its registered assigns, at Post Office Box 35, Shepherdstown, West Virginia 25443, or at such other place as the Purchaser may hereafter designate in writing, the principal sum of [ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000.00)], plus interest on the unpaid principal balance at the rate of \_\_\_% per annum. The said principal and interest shall be paid in monthly installments in the amount of \$ \_\_\_\_\_, covering principal and interest, commencing on \_\_\_\_\_, 2021, and thereafter on said corresponding day of each month except that the final installment shall be paid on \_\_\_\_\_, 203\_. Every payment made hereon shall be applied first to interest computed to the effective date of the payment and then to principal.

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

"Determination of Taxability" means a determination that all or any portion of the interest income on this Bond is not excludable from the gross income under Section 103 of the Code ("exempt interest") of a holder or former holder of this Bond. The determination shall be deemed to have been made upon the occurrence of the first to occur of the following: (a) the date on which the registered owner of this Bond is notified that Bond Counsel is unable to deliver an opinion that interest on this Bond is excludable from gross income for federal income tax purposes; (b) the date on which any change in law or regulation becomes effective or on which the Internal Revenue Service (the "IRS") issues any private ruling, technical advice or any other written communication with or to the effect that the interest income on this Bond does not qualify as exempt interest; or (c) the date on which the Issuer shall receive notice from the Purchaser in writing that the Purchaser has been notified by the Internal Revenue Service, or has been advised by the Issuer, any registered owner or former registered owner of this Bond that the Internal Revenue Service has issued a thirty-day letter or other notice which asserts that the interest on this Bond does not qualify as exempt interest.

"Taxable Rate" means \_\_\_\_\_% per annum.

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



The principal and interest installments on this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of Jefferson Security Bank, Post Office Box 35, Shepherdstown, West Virginia 25443, as the Registrar (as defined in the hereinafter described Bond Legislation) on the 15<sup>th</sup> day of the month next preceding a payment date, or by such other method as shall be mutually agreeable so long as the Purchaser is the registered owner hereof.

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

This Bond is issued (i) to finance costs of additions, betterments and improvements to the waterworks system of the Issuer, including without limitation, additions, betterments and improvements to the water treatment plant and related facilities (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing water facilities of the Issuer and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the "Act"), and a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2021, and put into effect passed on final reading following a public hearing held on \_\_\_\_\_, 2021, as supplemented and amended by a Supplemental Resolution adopted on \_\_\_\_\_, 2021 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other securities provided for the Bonds of this Series (the "Bonds") under the Bond Legislation.

THE BONDS ARE ON A PARITY AS TO LIENS, PLEDGE, SOURCE OF AND SECURITY FOR PAYMENT WITH THE ISSUER'S WATER REVENUE BONDS, SERIES 2003A (WEST VIRGINIA DWTRF PROGRAM), DATED JUNE 13, 2003, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$699,459; WATER REVENUE BONDS, SERIES 2003B (WEST VIRGINIA DWTRF PROGRAM), DATED JUNE 13, 2003, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,300,54; WATER REVENUE BONDS, SERIES 2012 (WEST VIRGINIA INFRASTRUCTURE FUND), DATED JULY 19, 2012, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,000,000; AND WATER REVENUE BONDS, SERIES 2017, DATED JUNE 15, 2017, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,650,000 (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2021 Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues

shall be sufficient to pay the principal of and interest on all Bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 2021 Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, for each fiscal year beginning on and after July 1, 2021, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each fiscal year equal to at least 115% of the maximum amount payable in any fiscal year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the Prior Bonds. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

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

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

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

and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, the CORPORATION OF SHEPHERDSTOWN has caused this Series 2021 Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder and has caused this Series 2021 Bond to be dated \_\_\_\_\_, 2021.

CORPORATION OF SHEPHERDSTOWN

[CORPORATE SEAL]

Attest:

\_\_\_\_\_  
Recorder

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

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Bond is one of the Series 2021 Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 2021.

JEFFERSON SECURITY BANK, as Registrar

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





## ASSIGNMENT

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

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

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.10. Designation of Bonds as “Qualified Tax-Exempt Obligations”. The Issuer hereby designates the Series 2021 Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b)(3)(B) of the Code and covenants that the Series 2021 Bonds do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income tax purposes (excluding, however, obligations described in Section 265(b)(3)(C)(ii) of the Code), including the Series 2021 Bonds, have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, during the calendar year 2021.

**ARTICLE IV**

**[RESERVED]**

## ARTICLE V

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

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

- A. Revenue Fund
- B. Series 2021 Bonds Construction Trust Fund; and
- C. Rebate Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued if previously established or continued by the Prior Ordinances) with, and shall be held by, the Commission, separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

- A. Depreciation Account;
- B. Series 2003A Bonds Sinking Fund (created or continued by the Prior Ordinances);
- C. Within the Series 2003A Bonds Sinking Fund, the Series 2003A Bonds Reserve Account (created or continued by the Prior Ordinances);
- D. Series 2003B Bonds Sinking Fund (created or continued by the Prior Ordinances);
- E. Within the Series 2003B Bonds Sinking Fund, the Series 2003B Bonds Reserve Account (created or continued by the Prior Ordinances);
- F. Series 2012 Bonds Sinking Fund (created or continued by the Prior Ordinances);
- G. Within the Series 2012 Bonds Sinking Fund, the Series 2012 Bonds Reserve Account (created or continued by the Prior Ordinances);
- H. Series 2017 Bonds Sinking Fund;
- I. Within the Series 2017 Bonds Sinking Fund, the Series 2017 Bonds Reserve Account;
- J. Within the Series 2017 Bonds Sinking Fund, the Series 2017 Bonds Redemption Account;

- K. Series 2021 Bonds Sinking Fund; and
- L. Within the Series 2021 Bonds Sinking Fund, the Series 2021 Bonds Reserve Account.

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

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

- (1) The Issuer shall first each month transfer from the Revenue Fund and pay all current Operating Expenses of the System.
- (2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission (i) the amounts required to be transferred to the Commission with respect to the interest on the Prior Bonds, and (ii) for deposit in the Series 2021 Bonds Sinking Fund a sum equal to the amount of interest which will be due and payable on the Series 2021 Bonds on the first day of the following month.
- (3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission (i) the amounts required to be transferred to the Commission with respect to the principal of the Prior Bonds, and (ii) for deposit in the Series 2021 Bonds Sinking Fund a sum equal to the amount of principal which will be due and payable on the Series 2021 Bonds on the first day of the following month, provided, that the amount of such deposits with respect to the Series 2021 Bonds shall be reduced by the amount of any earnings credited to the Series 2021 Bonds Sinking Fund and not previously applied to reduce such deposits in accordance with the Commission's practices and procedures.

Moneys in the Series 2021 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2021 Bonds as the same shall become due, whether by maturity or redemption prior to maturity. Pending such use, such moneys shall be invested in accordance with Article VIII.

The Issuer shall not be required to make any further payments into the Series 2021 Bonds Sinking Fund when the aggregate amount of funds in the Series 2021 Bonds Sinking Fund, including the Series 2021 Bonds Reserve Account therein, is at least equal to the aggregate principal amount of Series 2021 Bonds issued pursuant to this Resolution then

Outstanding, plus the amount of interest due or thereafter to become due on the Series 2021 Bonds then Outstanding.

The payments into the Series 2021 Bonds Sinking Fund shall be made on the first day of each month, except that, when the first day of any month shall be a Saturday, Sunday or legal holiday, then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Bond Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Resolution.

- (4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission (i) the amounts required to be transferred to the Commission with respect to debt service reserve requirements of the Prior Bonds, and (ii) for deposit into the Series 2021 Bonds Reserve Account an amount equal to 1/120th of the Series 2021 Bonds Reserve Requirement, until the amount in the Series 2021 Bonds Reserve Account equals the Series 2021 Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 2021 Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2021 Bonds Reserve Requirement .

Amounts in the Series 2021 Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 2021 Bonds when due when amounts in the Series 2021 Bonds Sinking Fund are insufficient therefor, for prepayment of installments on the Series 2021 Bonds or for mandatory prepayment of the Series 2021 Bonds to the extent required, and for no other purpose.

All investment earnings on moneys in the Series 2021 Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing installment of principal and interest due on the Series 2021 Bonds.

Any withdrawals from the Series 2021 Bonds Reserve Account which result in a reduction in the balance of the Series 2021 Bonds Reserve Account to below the then applicable requirement therefor shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the priority set forth above.

As and when additional Bonds ranking on a parity with the Series 2021 Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional Parity Bonds and accomplish retirement thereof at maturity and



to accumulate a balance in the respective reserve account in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2021 Bonds Reserve Account when the aggregate amount of funds therein is at least equal to the lesser of (i) Series 2021 Bonds Reserve Requirement or (ii) the aggregate principal amount of the Series 2021 Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

- (5) The Issuer shall next, on the first day of each month, from the moneys remaining in the Revenue Fund, transfer from the Revenue Fund and remit to the Commission for deposit into the Depreciation Account a sum equal to 2 1/2 % of the Gross Revenues of the immediately preceding month, less any amount transferred to any Reserve Account. All funds in the Depreciation Account shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in Qualified Investments. Moneys in the Depreciation Account shall be used first to make up deficiencies for monthly payments of the principal of and interest on the Prior Bonds and/or the Series 2021 Bonds as the same become due, and next to restore to the Reserve Accounts any sum or sums transferred therefrom, and provided that in the event there are not sufficient moneys in the Depreciation Account to make the transfer required by this sentence, such transfers shall be made on a pro rata basis. Thereafter, and provided that payments into the Reserve Accounts are current and in accordance with the foregoing provisions, withdrawals and disbursements may be made from the Depreciation Account for replacements, emergency repairs, improvements or extensions to the System.

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

The Commission is hereby designated as the fiscal agent for the administration of the Series 2021 Bonds Sinking Fund, the Series 2021 Bonds Reserve Account and the Depreciation Account created or continued hereunder, and all amounts required for said account shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

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