



West Virginia E-Filing Notice

CC-19-2018-C-144

Judge: David Hammer

To: Christopher Stroeck
cstroeck@arnoldandbailey.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

Jefferson County Vision Inc., a West Virginia Non-Profit Corporation v. The Jefferson County
Development Authority
CC-19-2018-C-144

The following complaint was FILED on 9/17/2018 6:31:21 PM

Notice Date: 9/17/2018 6:31:21 PM

Laura Storm
CLERK OF THE CIRCUIT
Jefferson
119 N George Street
CHARLES TOWN, WV 25414

(304) 728-3231
circuitclerk@jeffersoncountywv.org

COVER SHEET

E-FILED | 9/17/2018 6:31 PM
CC-19-2018-C-144
Jefferson County Circuit Clerk
Laura Storm

GENERAL INFORMATION

IN THE CIRCUIT COURT OF JEFFERSON COUNTY WEST VIRGINIA

Jefferson County Vision Inc., a West Virginia Non-Profit Corporation v. The Jefferson County Development Authority

First Plaintiff: Business Individual Government Other
First Defendant: Business Individual Government Other
Judge: David Hammer

COMPLAINT INFORMATION

Case Type: Civil **Complaint Type:** Other

Origin: Initial Filing Appeal from Municipal Court Appeal from Magistrate Court

Jury Trial Requested: Yes No **Case will be ready for trial by:** 9/1/2019

Mediation Requested: Yes No

Substantial Hardship Requested: Yes No

Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: _____

I am proceeding without an attorney

I have an attorney: Christopher Stroeck, 208 N George St, Charles Town, WV 25414

SERVED PARTIES

Name: The Jefferson County Development Authority

Address: 1948 Wiltshire Road, #4, Kearneysville WV 25430

Days to Answer: 20 **Type of Service:** Plaintiff - Private Process Server

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

**JEFFERSON COUNTY VISION, INC.,
a West Virginia Non-Profit Corporation, and
DONALD SUTHERLAND,
a Jefferson County Resident,**

Plaintiffs,

v.

CIVIL ACTION NO.: _____

**the JEFFERSON COUNTY DEVELOPMENT AUTHORITY,
a Public Corporation of the State of West Virginia,**

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF

The Plaintiffs, by counsel, S. Andrew Arnold, Esq., Christopher P. Stroeck, Esq., and the law firm of Arnold & Bailey, PLLC, hereby bring the following Complaint for Injunctive Relief against the Jefferson County Development Authority. Plaintiffs request that this Court enjoin the Jefferson County Development Authority from taking any further action regarding the approval, funding and construction of the Jefferson Orchards Waterline Extension Project until such time as it has appropriately complied with applicable statutory law. Specifically, Plaintiffs assert that the JDCA may not proceed with construction or improvements of the above-referenced project because it has not obtained a Certificate of Public Convenience and Necessity, as required by W.Va. Code § 24-2-11 (2018). Plaintiffs allege the following in support of its Complaint:

The Parties

1. Plaintiff, Jefferson County Vision, Inc. ("JCV") is a West Virginia Non-Profit Corporation, formed for the purpose of preserving and protecting the quality of life for all Jefferson County, West Virginia residents. JCV has a primary business address of P.O. Box 103, Shenandoah Junction, West Virginia, 25442.

2. Plaintiff, Donald Sutherland, is a West Virginia resident with a residential address of 866 Warm Springs Road, Shenandoah Junction, West Virginia, 25442, located in close proximity to proposed Site and Facility, as defined herein.

3. Defendant, the Jefferson County Development Authority, is a public body organized pursuant to W.Va. Code § 7-12-1, et seq. (2018).

Jurisdiction and Venue

4. Jurisdiction and venue are both proper in Jefferson County, West Virginia as the proposed Jefferson Orchards Water Line Extension Project will be located herein and the violations of statutory law by the Defendant arose in Jefferson County, West Virginia.

Undisputed Facts

5. Rockwool a/k/a Roxul USA Inc. ("Rockwool"), a Delaware Corporation, is a manufacturer of stone wool insulation, and offers a full range of insulation products for the retail, commercial and industrial markets.

6. Rockwool plans to acquire, construct, own and operate a manufacturing facility (the "Facility") on a parcel of real property comprising 130 acres on a 400-acre tract of real property located in the vicinity of West Virginia State Route 9, in Jefferson County, West Virginia, known as Jefferson Orchards (the "Site").

7. Upon information and belief, if Rockwool is permitted to operate at the Site, the Facility will generate certain air and water emissions, will produce unsightly sounds, odors, lighting, etc., and will create significant truck traffic to and from the Site. More specifically, Rockwool is permitted to emit in excess of 2 million pounds of toxic air release that are reportable to the EPA, including: NO_x – 238.96 tons/year; CO – 74.1 tons/year; VOC (Volatile Organic Compounds) – 471.41 tons/year; SO₂ – 147.45 tons per year – PM(1) (particulate Matter 1

micron) 129.23 tons/year; PM10 – 153.19 tons/year; PM 2.5 – 133.41 tons/year; Lead - .0002 tons/year; H2SO4 Mist – 16.37 tons/year; Fluorides - .03 tons per year. for a total of 1,364.1502 tons per year. That is 2,728,300.4 pounds per year. The Jefferson County Board of Education has formally requested that Rockwool cease construction until a health and risk assessment can be completed.

8. The JCDA is a public corporation of the State of West Virginia created by the Jefferson County Commission pursuant to Chapter 7, Article 12 of the West Virginia Code for the purpose of promoting the economic welfare of Jefferson County and its citizens and is comprised of an appointed board of twenty (20) members.

9. Jefferson Utilities, Inc. ("JUI"), is a privately-held West Virginia Corporation, and is certified by the WVPSC to provide potable water service to customers in Jefferson County, through the utility's potable water treatment, storage and distribution system.

10. Potable water service is not currently available at the Site.

11. The JDCA, JUI and Rockwool have entered into a Memorandum of Understanding, whereby certain additions and improvements will be made to the existing water system owned and operated by JUI in order to provide potable water service to the Site and Facility, referred to herein as the Jefferson Orchards Water Line Extension Project (the "Project"). *See* Memorandum of Understanding dated October 17, 2017 ("10/17/17 MOU") attached hereto as Exhibit 1.

12. In order to provide funding for the Project, loans are to be acquired by the JCDA from the West Virginia Infrastructure and Jobs Development Council (the "WVIJDC"), based upon the recommendation of the West Virginia Development Office ("WVDO"), with the West Virginia

Water Development Authority ("WVWDA") providing a loan at the direction of the WVIJDC, at the most favorable interest rate and terms.

13. The 10/17/17 MOU provides, in part, as follows:

...the parties have determined, and JCDA has agreed, that the JCDA will (i) **acquire, construct and equip the Water Line Extension**; (ii) borrow from the WVWDA the necessary funds to finance the portion of the costs associated with the acquisition, construction, and equipping of the Water Line Extension over and above the contribution to such costs by JUI of \$330,000.00 (as further defined herein); and (iii) enter into an Operation and Maintenance with JUI (the "O&M Agreement") whereby JUI will operate and maintain the Water Line Extension to provide potable water service to the Facility, and pay a monthly Use Fee to JCDA, as further defined herein (emphasis added).

See Exhibit 1, Page 3. (emphasis added)

14. The 10/17/17 MOU further provides, in part, as follows:

a. JCDA has obtained a preliminary commitment from the WVDO to recommend to the WVIJDC that a loan be made by the WVWDA on behalf of the WVIJDC [to the JCDA] to finance the acquisition, construction and equipping of the Water Line Extension in an amount sufficient to pay for all costs to construct the Water Line Extension (less the contribution of JUI) and having terms satisfactory to the JCDA...

b. JCDA will coordinate with JUI on the **acquisition, construction and equipping** of the Water Line Extension per the plans and specifications provided by JUI (emphasis added).

c. JCDA will use its best efforts to obtain the rights-of-way and easements needed for the acquisition, construction and equipping of the Water Line Extension.

d. JCDA and JUI will enter into an O&M Agreement, alternate main line extension agreement and/or other form of agreement whereby JUI will agree to (i) operate and maintain the Water Line Extension for a period of forty (40) years (or until the principal of, and accrued interest (if any) on the WVWDA Loan is paid in full) from the date of substantial completion of the Water Line Extension, and (ii) pay a Use Fee, as defined hereinabove, to JCDA. At the termination of the O&M Agreement, alternate main line extension agreement and/or other form of agreement, or at such earlier time as the WVWDA Loan is paid in full, the Water Line Extension shall be conveyed by JCDA to JUI for the sum of \$1.00, and the obligation to pay the Use Fee shall terminate. JCDA shall not convey the Water Line Extension to JUI as provided for in the previous sentence until the WVWDA Loan is paid in full.

See Exhibit 1, Pages 6-7.

15. As set forth in the 10/17/17 MOU, the total approximate cost to extend potable water service to the Site is \$3,100,000.00, with JUI contributing only \$330,000.00, or 10.5% of the total estimated cost.

16. In order to proceed with the Project, the JCDA and the City of Ranson have entered into a Memorandum of Understanding, whereby the JCDA assigned certain obligations as set forth in the 10/17/17 MOU to Ranson. See Memorandum of Understanding dated November 7, 2017 (the "11/07/17 MOU") attached hereto as Exhibit 2.

17. The 11/07/17 MOU provides, in part, as follows:

WHEREAS, JCDA, Jefferson Utilities, Inc. (hereafter, "JUI, Inc."), and ROXUL USA, Inc. have agreed that JUI, Inc. and JCDA will **fund, acquire, construct and activate a water main line extension** appropriate and necessary to serve a facility to be owned and operated by ROXUL USA, Inc., and,

See Exhibit 2, Page 1. (emphasis added).

18. The 11/07/17 MOU further provides, in part, as follows:

1. The underlying terms and conditions of the Memorandum of Understanding between JCDA, Jefferson Utilities and Roxul USA dated October 17, 2017, and attached to this MOU at "Exhibit 1" shall remain in full force and effect.
2. JCDA assigns to the City, and the City accepts, the obligations, rights and responsibilities pursuant Paragraph 3a, 3b and 3c of Exhibit 1.
3. During construction and performance by City of said transferred obligations, title to the water line and its fixtures and appurtenances, and associated risk of loss shall remain with JCDA. Upon satisfaction of the terms and conditions of the MOU (Exhibit 1), and issue of a certificate of substantial completion of the water line extension, the City's obligations and responsibilities regarding the water line extension shall terminate.
4. JCDA pledges to fully compensate the City for, and hold the City fully harmless from, any and all costs associated with the City's work described herein. The City shall provide a detailed invoice or invoices to JCDA for work performed by the

City, which invoice(s) shall be paid within thirty (30) days to presentation by the City.

5. JCDA shall, throughout the course of this work, maintain adequate insurance against loss, damage or injury arising from the work. Furthermore, to the full extent permitted by law, JCDA shall indemnify and hold harmless the City from and against any and all liabilities and expenses arising from the work, excluding liabilities that may arise from alleged or adjudged negligent acts of the City and/or its agents.

19. The JCDA has drafted and is considering the approval of a Bond Ordinance, as related to the funding that it will receive from the WVIJDC, through the WVWDA, for the Project. *See* Bond Ordinance attached hereto as Exhibit 3.

20. Indeed, the JCDA meeting agenda for September 18, 2018, at 3:00pm, indicates that the JCDA will consider on third reading and act upon the proposed Bond Ordinance. *See* JCDA Agenda 09/18/18 attached hereto as Exhibit 4.

21. Moreover, the JCDA is represented by Attorney William Rohrbaugh, who has advised JCDA members that their failure to vote in favor of the proposed Bond Ordinance exposes them to personal liability. *See* Rorhbaugh letter attached hereto as Exhibit 5.

Applicable Law

22. Plaintiffs incorporate all Paragraphs herein.

23. West Virginia Code § 24-2-11 provides as follows:

(a) A public utility, person or corporation other than a political subdivision of the state providing water or sewer services and having at least four thousand five hundred customers and annual gross combined revenues of \$3 million dollars or more may not begin construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing such construction franchise, license or permit.

24. Pursuant to West Virginia Code § 7-12-6 (2018), the "authority and the members" of the JCDA "shall constitute a public corporation under the name provided for in section one, and as such shall have perpetual succession, may contract and be contracted with, sue and be sued, plead and be pleaded, and have and use a common seal."

25. The West Virginia Public Service Commission ("WVPSC") has the discretion to issue or refuse a request for a certificate of public convenience and necessity, following adequate prior public notice and process. If the JCDA is issued a certificate of public convenience and necessity, following adequate prior public notice and process, it must comply with any conditions implemented by the WVPSC.

26. Pursuant to Article 10, Section 8 of the West Virginia Constitution (2018):

Bond Indebtedness of Counties, etc.

No county, city, school district, or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted, in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax on all taxable property therein, in the ratio, as between the several classes or types of such taxable property, specified in section one of this article, separate and apart from and in addition to all other taxes for all other purposes, sufficient to pay, annually, the interest on such debt, and the principal thereof, within, and not exceeding thirty-four years. Such tax, in an amount sufficient to pay the interest and principal on bonds issued by any school district not exceeding in the aggregate three per centum of such assessed value, may be levied outside the limits fixed by section one of this article: Provided, That no debt shall be contracted under this section, unless all questions connected with the same, shall have been first submitted to a vote of the people, and have received three fifths of all the votes cast for and against the same.

27. Pursuant to Article 10, Section 8a of the West Virginia Constitution (2018):

Issuance of bonds or other obligations payable from property taxes on increases in value due to economic development or redevelopment projects in counties and municipalities.

Notwithstanding any other provision of this Constitution to the contrary, the Legislature by general law may authorize the issuance of revenue bonds or other obligations by counties and municipalities to assist in financing qualified economic development or redevelopment projects that benefit public health, welfare and safety subject to conditions, restrictions or limitations as the Legislature may prescribe by general law.

The bonds or other obligations are payable from property tax revenues generated by the increases in value of property located within the development or redevelopment project area or district due to capital investment in the project. The Legislature shall prescribe by general law the manner in which these increases are determined.

The term for any bonds or other obligations issued **may not exceed thirty tax years**. The bonds or other obligations may not be deemed to be general obligations of the issuing county or municipality or of this state. The bonds or other obligations may provide for the pledge of any other funds as the owner of the improvements may by contract or otherwise be required to pay. Upon payment in full of the bonds, the increased tax revenues shall revert to the levying bodies authorized under the provisions of this Constitution to receive the revenues. The bonds or other obligations may not be paid from excess levy, bond levy or other special levy revenues (emphasis added).

28. Pursuant to West Virginia Code § 7-12-3 (2018), the JCDA is required to have a representative of labor on its Board.

COUNT I - Violation of State Law

29. Plaintiffs incorporate all Paragraphs herein.

30. The JCDA violated state law and acted beyond its jurisdiction when it took certain action to fund and/or begin construction on the Project before obtaining a Certificate of Public Convenience and Necessity as required by W.Va. Code § 24-2-11.

31. JUI obtained a Certificate of Public Convenience and Necessity from the WVPS; however, applicable law requires that the JCDA, as the entity charged with constructing the Project, must first obtain a Certificate of Public Convenience and Necessity from the WVPS. *See* WVPS Order dated July 1, 2018 attached hereto as Exhibit 5.

32. Indeed, the JDCA will obtain funding for 90% of the estimated cost for the Project, it will retain title and ownership of the water line and its fixtures and appurtenances, it will oversee

construction for the Project, maintain liability insurance for the Project and otherwise remain actively involved in the Project's implementation. Accordingly, the JCDA may not rely upon the Certificate of Necessity received by JUI.

33. As a result of this violation of applicable statutory law by the Defendant governing body, Plaintiffs will be damaged and irreparably harmed if Defendant is not enjoined from proceeding.

COUNT II - Violation of State Law

34. Plaintiffs incorporate all Paragraphs herein.

35. The JCDA violated state law and and/or acted beyond its jurisdiction in that the terms of the bonds issued by the JDCA exceed the 30-year permissible term as set forth in Article 10, Sections 8 and 8a of the West Virginia Constitution.

36. As a result of this violation of state law, Plaintiffs will be damaged and irreparably harmed if Defendant is not enjoined from proceeding.

COUNT III - Violation of State Law

37. Plaintiffs incorporate all Paragraphs herein.

38. Upon information and belief, the JCDA violated state law and/or acted beyond its jurisdiction in that it does not have a representative of labor on its pursuant as required by West Virginia Code § 7-12-3.

39. As a result of this violation of state law, Defendant is without authority to proceed and Plaintiffs will be damaged and irreparably harmed if Defendant is not enjoined from proceeding.

Relief Sought

WHEREFORE, Plaintiffs request the following relief:

- A. That this Court immediately stay all actions of the JCDA as related to Jefferson Orchards Waterline Extension Project;

- B. That this Court rule that the failure of the JCDA to obtain a Certificate of Convenience and Necessity for the Project is improper and in violation of West Virginia statutory law;
- C. That this Court order that the JCDA comply with applicable West Virginia law governing its actions;
- D. That this Court award Plaintiffs their reasonable attorneys' fees and costs;
- E. That this Court grant such other relief as deemed necessary and just.

**JEFFERSON COUNTY VISION, INC. and
DONALD SUTHERLAND
Plaintiffs, By Counsel**



S. Andrew Arnold, Esq. (WVSB #6131)
Christopher P. Stroeck, Esq. (WVSB #9387)
Arnold & Bailey, PLLC
208 N. George Street
Charles Town, WV 25414
304-725-2002
304-725-0283 (Fax)
cstroeck@arnoldandbailey.com
saarnold@arnoldandbailey.com

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

JEFFERSON COUNTY VISION, INC.,
a West Virginia Non-Profit Corporation, and
DONALD SUTHERLAND,
a Jefferson County Resident,

Petitioners,

v.

CIVIL ACTION NO.: _____

the JEFFERSON COUNTY DEVELOPMENT AUTHORITY,
a Public Corporation of the State of West Virginia

Respondent.

VERIFICATION

I, Donald Sutherland, a Petitioner named in this verified pleading, being first duly sworn, deposes and says that the facts and allegations set forth in the Petition are true and correct insofar as they are therein stated to be upon information and belief.


DONALD SUTHERLAND

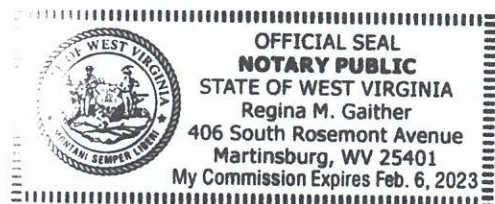
STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit;

Taken and subscribed and sworn by Donald Sutherland, before me, in my said State and County, this 17th day of September, 2018.


Notary Public

My Commission expires: February 6, 2023



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

JEFFERSON COUNTY VISION, INC.,
a West Virginia Non-Profit Corporation, and

_____,
a Jefferson County Resident,

Petitioners,

v.

CIVIL ACTION NO.: _____

the JEFFERSON COUNTY DEVELOPMENT AUTHORITY,
a Public Corporation of the State of West Virginia

Respondent.

VERIFICATION

I, Amanda Foxx, Board Member for Jefferson County Vision, Inc., a Petitioner named in this verified pleading, being first duly sworn, deposes and says that the facts and allegations set forth in the Petition are true and correct insofar as they are therein stated to be upon information and belief.




AMANDA FOXX
Jefferson County Vision, Inc.

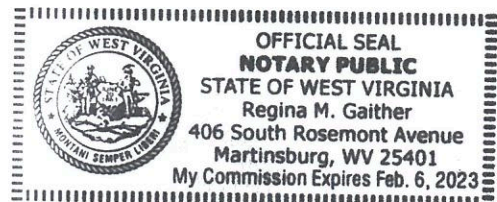
STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit;

Taken and subscribed and sworn by Amanda Foxx, before me, in my said State and County, this 17th day of September, 2018.


Notary Public

My Commission expires: February 6, 2023



MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (“MOU”) dated as of this 17th day of October 2017, by and among Roxul USA Inc., a corporation of the State of Delaware (the “Company”), the Jefferson County Development Authority, a public corporation of the State of West Virginia (the “JCDA”), and Jefferson Utilities, Inc., a West Virginia corporation (“JUI”) (singularly, each a “Party,” and collectively, the “Parties”).

W I T N E S S E T H:

WHEREAS, the Company is a leading manufacturer of stone wool insulation, and offers a full range of high-performing and sustainable insulation products for the retail, commercial, and industrial markets;

WHEREAS, the JCDA is a public corporation of the State of West Virginia created by The County Commission of Jefferson County pursuant to Chapter 7, Article 12, of the West Virginia Code for the express purpose, among others, of promoting, developing and advancing business prosperity and economic welfare of Jefferson County, its citizens and its industrial complex;

WHEREAS, JUI is a privately-held corporation certificated by the Public Service Commission of West Virginia (the “PSC”) as a public utility to provide potable water service to approximately 3,000 customers in areas of Jefferson County, West Virginia, through the utility’s potable water treatment, storage and distribution system (collectively, the “JUI Water System”);

WHEREAS, there is an approximately 400-acre tract of real property located in Jefferson County, West Virginia, in the vicinity of West Virginia State Route 9 that is commonly known as Jefferson Orchards (the “Jefferson Orchards Site”), as shown on Exhibit A attached hereto;



WHEREAS, the Company plans to acquire, construct, own and operate a manufacturing facility (the "Facility") on a parcel of real property comprising approximately 130 acres which is a part of the Jefferson Orchards Site (the "Real Property");

WHEREAS, the Real Property is located within the service territory of JUI, however, potable water service is not currently available at the Real Property;

WHEREAS, the Parties have held discussions concerning the design, acquisition, construction and equipping of the necessary additions, betterments and improvements to the JUI Water System to provide potable water service to the Real Property and, thus, the Facility;

WHEREAS, the Company has stated that, in order to acquire, construct, equip and operate the Facility, the Company will initially require not less than 160,000 gallons of water per day ("gpd") through the construction period for the Facility, expected to be 12 months, subsequently increasing to not less than 320,000 gpd of water, together with fire protection service, all of which JUI shall provide in accordance with the requirements of the PSC, including, but not limited to, the provisions of the PSC's *Rules for the Government of Water Utilities*, W. VA. CODE R. §§ 150-7-1, *et seq.*;

WHEREAS, the additions, betterments and improvements to the JUI Water System required to provide potable water service to the Facility in the amounts required by the Company include, but are not limited to, approximately 10,800 linear feet of 16-inch water line and a 660,000 gallon water storage tank, and all necessary appurtenances (collectively, the "Water Line Extension");

WHEREAS, in order to access loan monies from the West Virginia Infrastructure and Jobs Development Council (the "WVIJDC"), based on the recommendation of the West Virginia Development Office ("WVDO"), with the West Virginia Water Development Authority

(“WVWDA”) providing a loan at the direction of the WVIJDC, at the most favorable interest rate and other terms, the Parties have determined, and JCDA has agreed, that the JCDA will (i) acquire, construct and equip the Water Line Extension; (ii) borrow from the WVWDA the necessary funds to finance the portion of the costs associated with the acquisition, construction and equipping of the Water Line Extension over and above the contribution to such costs by JUI of \$330,000 (as further defined herein); and (iii) enter into an Operation and Maintenance Agreement with JUI (the “O & M Agreement”) whereby JUI will operate and maintain the Water Line Extension to provide potable water service to the Facility, and pay a monthly Use Fee to JCDA, as further defined herein;

WHEREAS, in recognition of the substantial investment required for the Water Line Extension, the Company has agreed that it will not seek any other source of potable or non-potable water, specifically including, but not limited to, drilling water wells, using any existing water wells, or any other ground water source, for a term of ten (10) years commencing on the first day of the first month the Facility begins commercial operations;

WHEREAS, the Company will be charged under the same tariff as all water customers of JUI;

WHEREAS, neither JCDA nor the Company intend to become a public utility subject to regulation by the PSC as a result this transaction, and the Parties agree to structure this transaction and make all modifications necessary in order to ensure and protect the JCDA and Company from any requirement to become a public utility subject to regulation by the PSC; and

WHEREAS, the Parties desire to enter into this MOU to memorialize the understanding of the Parties and provide the terms upon which the Parties may rely in taking the further actions, and incurring costs, required for the implementation of the arrangement outlined herein;

NOW, THEREFORE, in consideration of the premises and representations set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Company Responsibilities.

a. Company has provided the following water demand requirements with respect to the Facility:

i. Company has requested that potable water service for construction purposes in the amount of not less than 160,000 gpd be available at the Real Property not later than six (6) months after JCDA closes on the WVWDA Loan, and that potable water service in the amount of not less than 320,000 gpd together with fire protection service be available at the Real Property not more than twelve (12) months after construction of the Water Line Extension begins.

b. Company will execute a User Agreement, the form of which is attached as Exhibit B.

c. Company will pay for water service at JUI's tariff rates and charges, as approved by the PSC from time to time.

d. Company agrees that it will satisfy all potable and non-potable water needs at the Facility and Real Property through water purchased from JUI and will not seek any other source of potable or non-potable water, specifically including, but not limited to, drilling water wells, using any existing water wells, or any other ground water source, for a term of ten (10) years commencing on the first day of the first month the Facility begins commercial operations.

2. JUI Responsibilities.

a. JUI will plan, design and obtain required permits for the Water Line Extension. JUI agrees that the Water Line Extension will be planned, designed and permitted to connect with the Facility in a manner and at a location agreed to by the Parties on property described in Deed Book 284 at Page 460 and designated as Map 12 and Parcel 1 on the tax maps of record in the Office of the Assessor of Jefferson County, West Virginia, and as shown on the map attached as Exhibit C. With regard to the location of JUI's connection with the Facility, the Parties agree to locate JUI's connection with the Facility through the existing casings (Option A) under West Virginia State Route 9 and the CSX Transportation railroad, as shown on the map attached as Exhibit C. If the existing casings (Option A) are determined not to allow JUI to properly provide water service to the Facility, JUI will locate its connection with the Facility through the new casings (Option B) under West Virginia State Route 9 and the CSX Transportation railroad, as shown on the map attached as in Exhibit C.

b. JUI agrees that the Water Line Extension will be planned, designed and permitted to provide the Facility, initially, with water service of not less than 160,000 gpd and, upon the completion of acquisition, construction and equipping of the Water Line Extension, not less than 320,000 gpd and fire protection service. The water service capacity required for the Facility and fire protection service shall be available not more than 15 months after JCDA closes on the WVVDA Loan.

c. JUI will provide, at its cost, all engineering, design, permits, and rights-of-way and easements for the Water Line Extension, as well as the water meter and telemetry required for the Water Line Extension, up to an aggregate maximum cost of \$330,000 as reflected on the preliminary project budget attached hereto as Exhibit D.

d. JUI will provide water that meets any of the current or future applicable standards established by the West Virginia Department of Health and Human Resources, Bureau for Public Health, the United States Environmental Protection Agency, or any other water quality laws, rules or regulations applicable to potable water in West Virginia.

e. JUI will use its best efforts to obtain the rights-of-way and easements needed for the acquisition, construction and equipping of the Water Line Extension.

f. JUI and JCDA shall enter into an O & M Agreement, alternate main line extension agreement and/or other form of agreement whereby JUI will agree to operate and maintain the Water Line Extension for a period of forty (40) years from the date of substantial completion of the Water Line Extension, and pay a "Use Fee" during the forty (40) year period to JCDA each month in an amount equal to \$2.88 per thousand gallons of water sold in the month immediately prior to all customers located and/or served on the Jefferson Orchards Site, specifically including, but not limited to, the Facility.

g. JUI shall have the right to provide potable water service to other customers from the Water Line Extension that are not located on the Jefferson Orchards Site, provided, however, that in providing such service to any additional customer(s) from the Water Line Extension, JUI agrees to maintain the capacity to deliver not less than 500,000 gpd to the Jefferson Orchards Site.

3. JCDA Responsibilities.

a. JCDA has obtained a preliminary commitment from the WVDO to recommend to the WVIJDC that a loan be made by the WVWDA on behalf of the WVIJDC to finance the acquisition, construction and equipping of the Water Line Extension in an amount sufficient to pay for all costs to construct the Water Line Extension (less the contribution of JUI)

and having terms satisfactory to the JCDA (the "WVWDA Loan"). A copy of the preliminary commitment for the WVWDA Loan is attached as Exhibit E.

b. JCDA will coordinate with JUI on the acquisition, construction and equipping of the Water Line Extension per the plans and specifications provided by JUI.

c. JCDA will use its best efforts to obtain the rights-of-way and easements needed for the acquisition, construction and equipping of the Water Line Extension.

d. JCDA and JUI will enter into an O & M Agreement, alternate main line extension agreement and/or other form of agreement whereby JUI will agree to (i) operate and maintain the Water Line Extension for a period of forty (40) years (or until the principal of, and accrued interest (if any) on the WVWDA Loan is paid in full) from the date of substantial completion of the Water Line Extension, and (ii) pay a Use Fee, as defined hereinabove, to JCDA. At the termination of the O & M Agreement, alternate main line extension agreement and/or other form of agreement, or at such earlier time as the WVWDA Loan is paid in full, the Water Line Extension shall be conveyed by JCDA to JUI for the sum of \$1.00, and the obligation to pay the Use Fee shall terminate. JCDA shall not convey the Water Line Extension to JUI as provided for in the previous sentence until the WVWDA Loan is paid in full.

4. Conditions Precedent.

a. The MOU shall expire and be of no force and effect in the event that:

i. The Company fails or refuses to execute the User Agreement prior to the start of construction of the Water Line Extension;

ii. JCDA does not close on the WVWDA Loan;

iii. JCDA and JUI fail to enter into the O & M Agreement, alternate main line extension agreement and/or other form of agreement;

iv. The WVWDA Loan does not include terms and conditions providing, among other things, that the monthly debt service for the WVWDA Loan shall be equal to the Use Fee paid by JUI to JCDA, as hereinabove described;

v. JUI or JCDA fail to obtain all required permits, right-of-ways and easements, and approvals for the Water Line Extension; or

vi. The O & M Agreement, alternate main line extension agreement or other form of agreement, WVWDA Loan or the Water Line Extension are not approved by the PSC.

5. Counterparts. This MOU may be executed in three or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This MOU may also be executed and delivered by facsimile signature and in three or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6. Entire Agreement. This MOU (including any exhibits and schedules hereto) constitutes the full and entire understanding and agreement between the Parties with respect to the subject matter hereof. The Parties may enter into such other agreements they deem necessary to carry out the provisions of this MOU.

7. Amendment; Waiver. This MOU may be amended, modified or terminated and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument executed by the Parties hereto. No waivers of or exceptions to any term, condition or provision of this MOU, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

8. Assignment of Agreement. This Agreement shall be binding upon the successors and assigns of the Parties.

9. Severability. The invalidity or unenforceability of any provision of this MOU shall in no way affect the validity or enforceability of any other provision.

10. Governing Law. This MOU and any controversy arising out of or relating to this MOU shall be governed by and construed in accordance with the laws of the State of West Virginia as to matters within the scope thereof, without regard to conflict of law principles that would result in the application of any law other than the law of the State of West Virginia.

11. Forum Selection. The Parties agree that any controversy arising out of or relating to this MOU, or the matters to which this MOU refers, shall be heard in The Circuit Court of Jefferson County, West Virginia.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their respective duly authorized representatives as of the day and year first above written.

ROXUL USA INC.

By: [Signature]
Its: President.

JEFFERSON COUNTY DEVELOPMENT AUTHORITY

By: _____
Its: Chairman

JEFFERSON UTILITIES, INC.

By: _____
Its: President

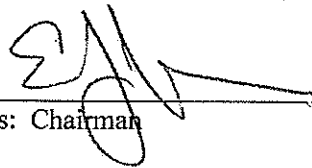
www.foxit.com

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their respective duly authorized representatives as of the day and year first above written.

ROXUL USA INC.

By: _____
Its:

JEFFERSON COUNTY DEVELOPMENT AUTHORITY

By:  _____
Its: Chairman

JEFFERSON UTILITIES, INC.

By: _____
Its: President

Execution Version

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their respective duly authorized representatives as of the day and year first above written.

ROXUL USA INC.

By: _____
Its:

JEFFERSON COUNTY DEVELOPMENT AUTHORITY

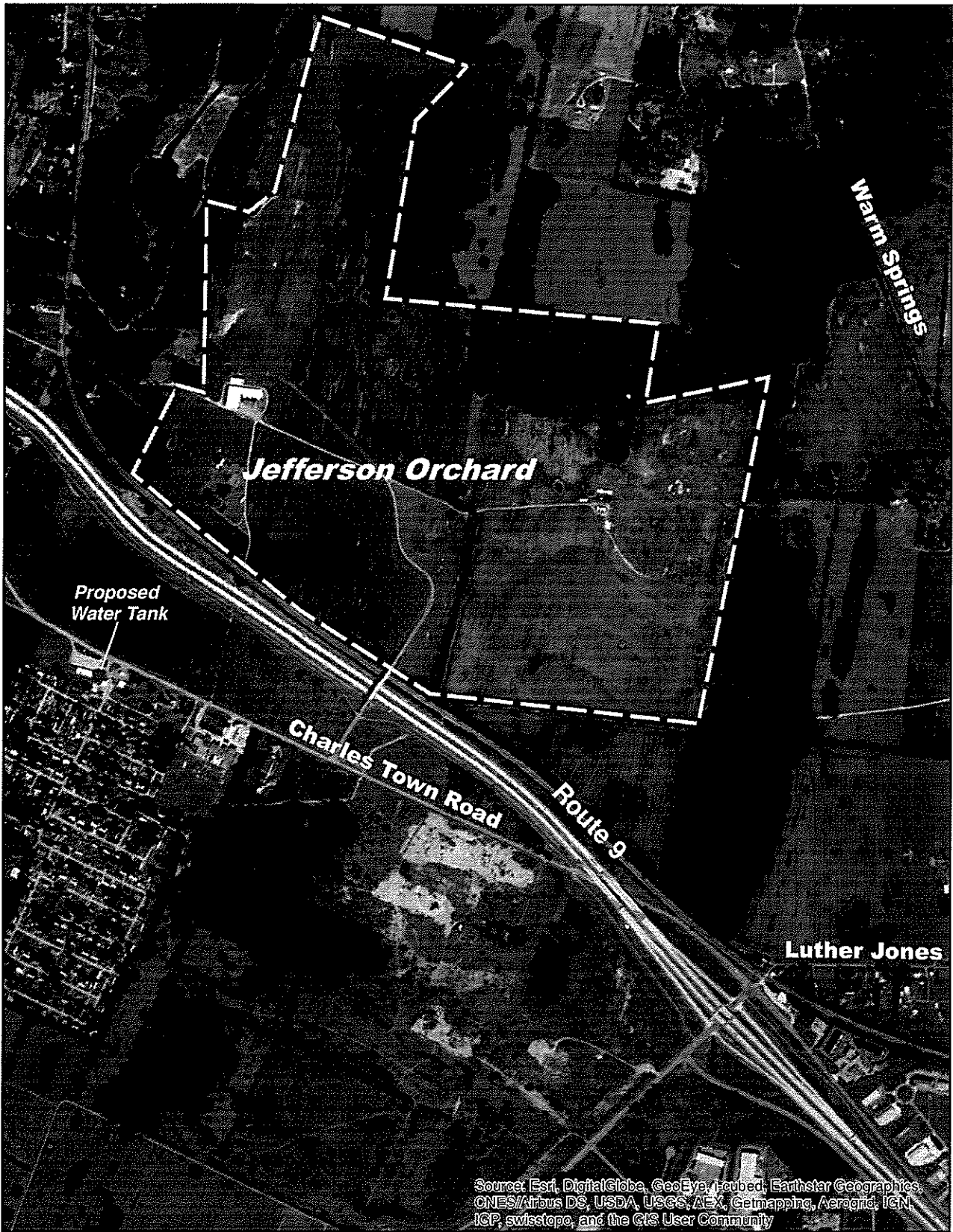
By: _____
Its: Chairman

JEFFERSON UTILITIES, INC.

By: B Lee Snyder
Its: President

EXHIBIT A

Jefferson Orchards Site



Jefferson Orchard Property

EXHIBIT B

Form of User Agreement

WATER USER AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____ 20___, by and among Jefferson Utilities, Inc., a West Virginia corporation (“JUI”), the Jefferson County Development Authority, a public corporation of the State of West Virginia (the “JCDA”), and Roxul USA Inc., a Delaware corporation (the “Customer”) (collectively, the “Parties”).

W I T N E S S E T H:

WHEREAS, the JCDA is a public corporation of the State of West Virginia created by The County Commission of Jefferson County pursuant to Chapter 7, Article 12, of the West Virginia Code, for the express purpose, among others, of promoting, developing and advancing business prosperity and economic welfare of Jefferson County, its citizens and its industrial complex;

WHEREAS, JUI is a privately-held corporation certificated by the Public Service Commission of West Virginia (the “PSC”) as a public utility to provide potable water service to approximately 3,000 customers in areas of Jefferson County, West Virginia through the utility’s potable water treatment, storage and distribution system (the “JUI Water System”);

WHEREAS, there is an approximately 400-acre tract of real property located in Jefferson County, West Virginia, in the vicinity of West Virginia State Route 9 that is commonly known as Jefferson Orchards (the “Jefferson Orchards Site”);

WHEREAS, the Company plans to acquire, construct, own and operate a manufacturing facility (the “Facility”) on a parcel of real property comprising approximately 130 acres which is a part of the Jefferson Orchards Site (the “Real Property”);

WHEREAS, the Real Property is located within the service territory of JUI, however, potable water service is not currently available at the Real Property;

WHEREAS, the Parties have held discussions concerning the design, acquisition, construction and equipping of the necessary additions, betterments and improvements to the JUI Water System to provide water service to the Real Property, and thus, the Facility;

WHEREAS, the Company has stated that, in order acquire, construct equip and operate the Facility, the Company will initially require 160,000 gallons of water per day (“gpd”) through the construction period, expected to be 12 months, increasing to 320,000 gpd of water, together with fire protection service;

WHEREAS, the additions, betterments and improvements to the JUI Water System required to provide potable water service to the Facility in the amounts required by the Company include, but are not limited to, approximately 10,800 linear feet of 16-inch water line and a 660,000 gallon water storage tank, and all necessary appurtenances (collectively, the “Water Line Extension”);

WHEREAS, in order to access loan monies from the West Virginia Infrastructure and Jobs Development Council (the "WVIJDC"), based on the recommendation of the West Virginia Development Office ("WVDO"), with the West Virginia Water Development Authority ("WVWDA") providing a loan at the direction of the WVIJDC, at the most favorable interest rate and other terms, the Parties have determined, and JCDA has agreed, that the JCDA will (i) acquire, construct and equip the Water Line Extension; (ii) borrow from the WVWDA the necessary funds to finance the portion of the costs associated with the acquisition, construction and equipping of the Water Line Extension over and above the contribution to such costs by JUI of \$330,000 (as further defined herein); and (iii) enter into an operation and maintenance agreement with JUI whereby JUI will operate and maintain the Water Line Extension to provide potable water service to the Facility, and pay a monthly Use Fee to JCDA; and

WHEREAS, in recognition of the substantial investment required for the Water Line Extension, the Company has agreed that it will not seek any other source of potable or non-potable water, specifically including, but not limited to, drilling water wells, using any existing water wells, or any other ground water source for a term of ten (10) years commencing on the first month the Facility begins commercial operations.

NOW THEREFORE, in consideration of the Parties mutual obligations and interests, the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree:

1. JUI shall plan, design, and obtain the required permits for the Water Line Extension, which extension will be planned, designed and permitted to provide the Facility, initially, with water service of not less than 160,000 gpd and, upon the completion of acquisition, construction and equipping of the Water Line Extension, not less than 320,000 gpd and fire protection service. JUI agrees that the Water Line Extension will be planned, designed and permitted to connect with the Facility on property described in Deed Book 284 at Page 460 and designated as Map 12 and Parcel 1 on the tax maps of record in the Office of the Assessor of Jefferson County, West Virginia. JUI shall have available water service for construction purposes to the Real Property not later than six (6) months after JCDA closes on the WVWDA loan, and it shall have available water service to the Facility and fire protection no sooner than fifteen (15) months after JCDA closes on the WVWDA loan. JUI will provide water that meets any of the current or future applicable standards established by the West Virginia Department of Health and Human Resources, Bureau for Public Health, the United States Environmental Protection Agency, or any other water quality laws, rules or regulations applicable to potable water in West Virginia.

2. After closing on the WVWDA loan, JCDA shall proceed with acquiring, constructing and equipping the Water Line Extension, provided, however, the Parties agree that JCDA shall have no obligation to begin acquiring, constructing and equipping the Water Line Extension until Customer provides JUI with the required easement(s) specified in Section 3 of this Agreement.

3. In exchange for the acquiring, constructing and equipping of the Water Line

Extension, Customer agrees to the following:

(a) Customer shall provide to JUI an easement(s) for the installation, operation, maintenance, repair, and removal of water lines and facilities on the Real Property; and

(b) Company agrees that it will satisfy all potable and non-potable water needs at the Facility through water purchased from JCDA and will not seek any other source of potable or non-potable water, specifically including, but not limited to, drilling water wells, using any existing water wells, or any other ground water source for a term of ten (10) years commencing on the first month the Facility begins commercial operations.

4. Upon substantial completion of the Water Line Extension, Customer agrees it shall become a water customer of JCDA. Customer agrees it shall remain a water customer and purchase all of its water requirements from JCDA for a period of at least ten (10) years from and including the date on which the Customer begins taking water from the Water Line Extension for use at the Facility.

5. Customer agrees to pay for water service at JCDA's tariff rates and charges as they may be approved by the PSC from time to time, which rates and charges shall be the same as the rates and charges of JUI.

6. The JUI shall be responsible for the operation and maintenance of the water facilities extended to serve the Facility that are upstream of the meter(s) that will serve the Facility, while Customer agrees that it shall be responsible for any facilities that are downstream of the meter(s) that will serve the facility. Neither JUI nor JCDA shall be liable for any damage or failure to pipelines, pumps, water distribution system or any other equipment or facilities Customer constructs or installs downstream of the meter(s) that will serve the Facility.

7. Customer agrees that it will not resell water provided under this Agreement to any other entity without the prior written consent of JUI and JCDA.

8. The term of this Agreement shall be forty (40) years from and including the date on which JUI begins delivering water to the Facility ("Initial Term"). Customer agrees that it may not terminate this Agreement during the Initial Term. After expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods unless and until terminated by either party by providing the other party ninety (90) days written notice by certified mail, return receipt requested.

9. In recognition of the fact that the rights and obligations of the Parties hereunder are individually negotiated and specific to the Parties, this Agreement shall not be assignable by either party without the consent of the other party, which consent shall not be unreasonably withheld.

10. All notices or other communications provided for or permitted hereunder shall be in writing and shall be served on the Parties at the addresses set forth below. Any such notice

shall be given or served by United States certified mail, postage pre-paid, return receipt requested. Notice given in accordance herewith shall be effective upon the earlier to occur of actual delivery to the address of the addressee or refusal of receipt by the addressee (even if such addressee refused delivery thereof). A party's address may be changed by written notice to the other party, but shall not become effective until such notice is actually received. Notices given by counsel for a party shall be deemed given by that party.

Roxul USA Inc.

Jefferson Utilities, Inc.
Attn: B. Lee Snyder, President
270 Industrial Boulevard
Kearneysville, West Virginia 25430

Jefferson County Economic Development Authority
Attn: Executive Director
Post Office Box 237
Charles Town, West Virginia 25414

11. This Agreement embodies the entire agreement between the Parties and supersedes all prior agreements and understandings, whether oral or written, express or implied. This Agreement may be modified or supplemented only by a written document signed by an authorized representative of each party.

12. This Agreement shall be governed in all respects by the laws of the State of West Virginia.

13. This Agreement may be signed in counterparts, which together shall constitute one agreement. If this Agreement is signed in counterparts, the Parties shall be bound until each of them has duly executed, or caused to be duly executed, a counterpart of this Agreement.

14. The Parties acknowledge that their respective counsel have reviewed and revised this Agreement and hereby agree that the normal rule of construction—to the effect that any ambiguities are to be resolved against the drafting party—shall not be employed in interpretation of this Agreement or any exhibits or amendments hereto.

15. The failure by either of the Parties to enforce against the other any term or provision of this Agreement shall not be deemed a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

[Signature Page Follows]

In witness hereof, the Parties have signed this Agreement as of the day and year first written above.

JEFFERSON UTILITIES, INC.

Its: President

**JEFFERSON COUNTY DEVELOPMENT
AUTHORITY**

Its: Chairman

ROXUL USA INC.

Its:

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON; to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____ 2017, by _____, who is the _____ of _____.

My commission expires: _____.

Notary Public

[SEAL]

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON; to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____ 2017, by _____, who is _____.

My commission expires: _____.

Notary Public

[SEAL]

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON; to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____ 2017, by _____, who is the _____ of _____.

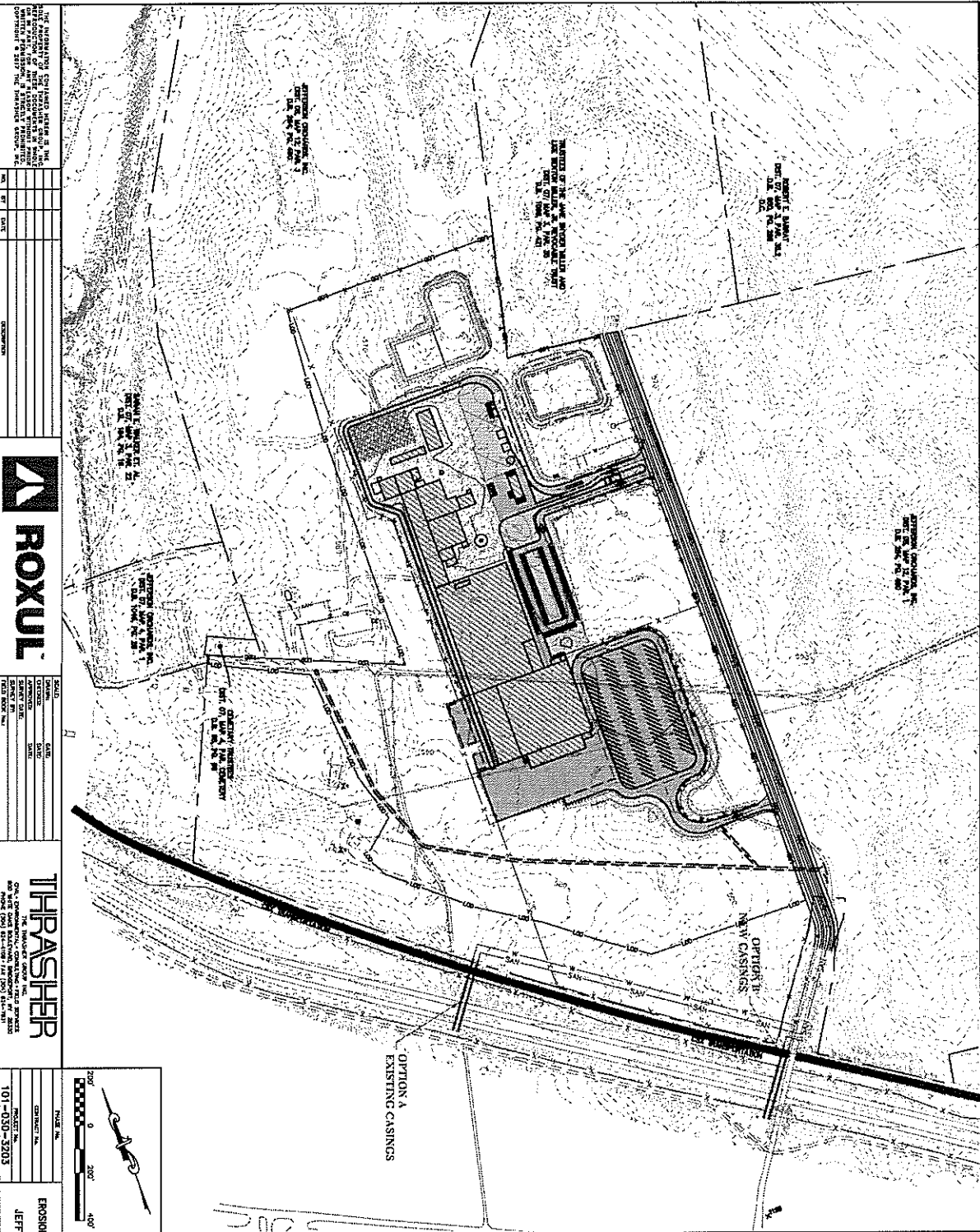
My commission expires: _____.

Notary Public

[SEAL]

EXHIBIT C

Facility Map



THE INFORMATION CONTAINED HEREIN IS THE PROPERTY OF ROXUL USA, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF ROXUL USA, INC.



NO.	DATE	DESCRIPTION

THRASHER
 THE THRASHER GROUP, INC.
 200 WEST MAIN STREET, SUITE 200
 FORT LEE, VIRGINIA 22049

SCALE	DATE
AS SHOWN	

ROXUL USA, INC.
 CONTROL PLANS
 RAN PROJECT
 JEFFERSON COUNTY, WEST VIRGINIA
 UTILITY EXHIBIT

SHEET NO. **X**

PLAN LEGEND

- PROPERTY LINE
- PROPOSED CONTOURS MAJOR / MINOR
- - - EXISTING CONTOURS MAJOR / MINOR
- PROPOSED CUT
- PROPOSED FILL
- CONCRETE AREA
- GREEN SPACE
- ASPHALT AREA
- BUILDING AREA
- DRIVEWAY AREA
- PROPOSED LIMITS OF DISTURBANCE
- PROPOSED & EXISTING UTILITIES

EXHIBIT D

Project Budget

Jefferson Orchard Extension Project

Location: Wiltshire Boulevard to Jefferson Orchard

Start Date: TBD

Engineering, Permitting & Easements	Estimate Net Price	Estimate Quantity	Estimate
Accounting, legal, PSC filings	\$ 150,000.00	LS	\$ 150,000.00
Geotechnical Study	\$ 25,000.00	LS	\$ 25,000.00
Waterline Engineering	\$ 88,400.00	LS	\$ 88,400.00
Waterline Permitting	\$ 6,000.00	LS	\$ 6,000.00
Easements	\$5 / ft	10,600	\$ 53,000.00
Easement plat & recordation	\$ 7,000.00	LS	\$ 7,000.00
Subtotal			\$ 329,400.00

Material for 16" Extension	Estimate Net Price	Estimate Quantity	Estimate
16 C909 PVC PIPE ULTRA BLUE	\$ 20.89	7400	\$ 154,586.00
16 C909 PVC PIPE ULTRA BLUE (onsite)	\$ 20.89	3200	\$ 66,848.00
12 C909 PVC PIPE ULTRA BLUE	\$ 16.50	200	\$ 3,300.00
16 MJ 11-1/4 BEND(I)CP DI C153	\$ 336.65	6	\$ 2,019.90
16 MJ 22-1/2 BEND(I)CP DI C153	\$ 318.22	6	\$ 1,909.32
16 MJ 45 BEND (I) CP DI C153	\$ 331.77	6	\$ 1,990.62
16 MJ 90 BEND (I) CP DI C153	\$ 501.55	7	\$ 3,510.85
16X16 MJ TEE (I) CP DI C153	\$ 651.07	6	\$ 3,906.42
16X12 MJ TEE (I) CP DI C153	\$ 513.85	1	\$ 513.85
12" GV W/ACC DI	\$ 1,618.49	1	\$ 1,618.49
12" FOSTER ADPT W/ACC	\$ 313.05	1	\$ 313.05
16 FOSTER ADPT 16FABC W/MJ AC	\$ 388.18	28	\$ 10,869.04
UFR1500-CA-16-I RETAINER W/ACC	\$ 170.39	72	\$ 12,268.08
16 MJ BUTTERFLY VALVE O/L	\$ 1,584.78	17	\$ 26,941.26
564-S VLV BOX WTR COMP IMP	\$ 64.63	17	\$ 1,098.71
VBFA-KFLO-16 VALVE BOX ADAPTER	\$ 102.47	17	\$ 1,741.99
6X1000' NON-DET TAPE-WTR LINE	\$ 25.71	8	\$ 205.68
6X1000' NON-DET TAPE-WTR LINE (onsite)	\$ 25.71	4	\$ 102.84
12GA X 500' BLUE SOLID WIRE	\$ 0.27	7400	\$ 1,998.00
12GA X 500' BLUE SOLID WIRE (onsite)	\$ 0.27	3200	\$ 864.00
TRACER WIRE ACCESS BOX	\$ 35.00	14	\$ 490.00
Above Ground Storage Tank (445,000 gal)	\$ 559,709.00	1	\$ 559,709.00
Above Ground Storage Tank (300,000 gal)	\$ 366,000.00	1	\$ 366,000.00
Concrete Slab	\$ 15,000.00	2	\$ 30,000.00
8" Dectecto Check Meter & Vault	\$ 40,000.00	1	\$ 40,000.00
Stone Dust delivered	\$ 24.00	5772	\$ 138,528.00
Seed	\$ 50.00	194	\$ 9,700.00
Straw	\$ 5.00	1003	\$ 5,015.00
Fertilizer	\$ 18.00	287	\$ 5,166.00
Subtotal			\$ 1,451,214.10

Installation of 16" Extension	Estimate Net Price	Estimate Quantity	Estimate
Foreman/truck	\$ 75.00	310	\$ 23,250.00
Operator-2	\$ 36.00	310	\$ 11,160.00
Operator-3	\$ 36.00	310	\$ 11,160.00
Operator-4	\$ 36.00	310	\$ 11,160.00
Laborer-1	\$ 29.00	310	\$ 8,990.00
Laborer-2	\$ 29.00	310	\$ 8,990.00

Installation of 16" Extension	Estimate Net Price	Estimate Quantity	Estimate
Seed/Straw Laborer	\$ 58.00	150	\$ 8,700.00
Automatic Traffic Signals/hauling	\$ 30.00	310	\$ 9,300.00
Lead Excavator (330 Size Machine)	\$ 125.00	310	\$ 38,750.00
Backfilling excavator (200 JD)	\$ 100.00	310	\$ 31,000.00
330 w/breaker	\$ 257.00	150	\$ 38,550.00
Roller/bucket combo	\$ 75.00	310	\$ 23,250.00
Wheel Loader	\$ 50.00	100	\$ 5,000.00
Skid Steer 333D	\$ 42.00	310	\$ 13,020.00
Dump Truck hauling off debri and dirt	\$ 60.00	310	\$ 18,600.00
Dump Truck hauling in of stone bedding	\$ 60.00	310	\$ 18,600.00
bedding box	\$ 40.00	100	\$ 4,000.00
Drilling & Blasting for line	\$ 16.50	10600	\$ 174,900.00
Subtotal			\$ 458,380.00

Bore	Estimate Net Price	Estimate Quantity	Estimate
New Bore Locations (bores under Rt 9 and RR)	\$ 598,350.85	1	\$ 598,350.85
Bore and Jack Locations	\$ 410.00	220	\$ 90,200.00
Permitting	\$ 25,000.00	1	\$ 25,000.00
Stone Dust delivered	\$ 24.00	40	\$ 960.00
Seed/Straw	\$ 10.00	50	\$ 500.00
Subtotal			\$ 715,010.85

Subtotal			\$ 2,954,004.95
Contingency Overage		10% overage	\$ 295,400.50
Total Project Cost			\$ 3,249,405.45

JEFFERSON COUNTY ECONOMIC DEVELOPMENT AUTHORITY
Waterline for Project Shuttle

DRAFT 5/15/17

PROJECT COSTS	Total	JUI	JCEDA
1 Total Construction			
Contract No. 1	2,529,950.00	0.00	2,529,950.00
Contingency 10%	252,995.00	0.00	252,995.00
2 Technical Services			
a. Preliminary Design	65,000.00	65,000.00	
b. Final Design	20,000.00	20,000.00	
c. Bidding & Negotiation	12,500.00		12,500.00
d. Construction Management	17,500.00		17,500.00
e. RPR/Inspection	60,000.00		60,000.00
f. Special Services			
Funding Applications/Meetings	7,500.00		7,500.00
Environmental Assessment/Impact Statement	17,500.00		17,500.00
Engineering & Topographic Surveys	5,000.00		5,000.00
Geotechnical Engineering	25,000.00		25,000.00
Land Surveys & Easement Preparation	15,000.00		15,000.00
Land Planning & Partioning Activities	7,500.00		7,500.00
Expert Witness Before Agencies	25,000.00		25,000.00
3 JUI Capital Investment			
a. Telemetry	15,000.00	15,000.00	
b. Meters	40,000.00	40,000.00	
4 JUI Accounting (Griffith)	52,000.00	52,000.00	
5 JUI Legal Fees			
a. Project Attorney (S&J)	52,000.00	52,000.00	
b. Land & ROW Attorney	25,000.00	25,000.00	
6 Administration	65,000.00		65,000.00
7 Lands & ROWs			
a. Acquisition/ROW Costs	33,000.00	33,000.00	
b. Easement plat and recordation	7,000.00	7,000.00	
8 Miscellaneous			
a. DOH permit	3,000.00	3,000.00	
c. Bureau of Public Health permit	3,000.00	3,000.00	
d. Other	15,000.00	15,000.00	
e. Project Contingency/Other	9,555.00		9,555.00
9 Total of Lines 1 through 8	3,380,000.00	330,000.00	3,050,000.00
COST OF FINANCING			
10 Funded Reserve	0.00	0.00	0.00
11 JCEDA Legal Counsel	30,000.00	0.00	30,000.00
12 Total Cost of Financing (line 10 through 12)	30,000.00		
13 Total Cost of Project (line 9 plus line 12)	3,410,000.00		
SOURCE OF OTHER FUNDS			
14 JUI Contribution	330,000.00		
15 State Grants			
16 Other Sources			
17 Total Non-WVIJDC Sources	330,000.00		
18 Size of WVIJDC Financing (Line 13 minues Line 17)	3,080,000.00		

Jefferson County Economic Development Authority

Date

[Engineer]

Date

EXHIBIT E

Binding Commitment for Funding



WEST VIRGINIA DEVELOPMENT OFFICE

1900 Kanawha Boulevard East • Charleston, WV 25305-0311
(304) 558-2234 • (800) 982-3386 • WVDO.org

May 16, 2017

John Reisenweber
Executive Director
Jefferson County Development Authority
PO Box 237
Charles Town, WV 25414

Re: Commitment to support extension of water service to Jefferson Orchards Site

Dear Mr. Reisenweber:

Please allow this letter to serve as a commitment by the State of West Virginia to provide Jefferson Utilities, Inc. with funding sufficient to ensure that potable water service is extended to the Jefferson Orchards site in Ranson, West Virginia. The availability of water service to this site is critical to support an industrial prospect that desires to construct a new manufacturing facility in that location.

Jefferson Utilities, Inc., has represented to the West Virginia Development Office ("WVDO") that the approximate cost to extend potable water service to the Jefferson Orchards site is \$3.1 million. The WVDO will facilitate the delivery of this funding through the Economic Development Bond fund that is administered by the WVDO and the West Virginia Infrastructure and Jobs Development Council. The term of the loan would be 38 years with an interest rate not to exceed 1%. At the appropriate time, the WVDO will contact you to coordinate the loan paperwork and documentation.

Thank you for your cooperation on this important project. If you have any questions or need any additional information, please contact Todd Hooker, our Deputy Director of Business and Industrial Development, at (304) 558-2234.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris N. Hopkins".

Kris N. Hopkins
Executive Director

KNH/teh

cc: Lee Snyder, Jefferson Utilities, Inc.

MEMORANDUM OF UNDERSTANDING (MOU)

This Memorandum of Understanding ("MOU") is entered into this November 7, 2017, by and between the City of Ranson ("City"), a West Virginia municipal corporation, and the Jefferson County Development Authority ("JCDA"), a public corporation of the State of West Virginia. These Parties intend and pledge to be legally bound to and by the rights and duties described below:

RECITALS

WHEREAS, the Parties have, individually and together, the right and authority to enter into this contract; and,

WHEREAS, JCDA, Jefferson Utilities, Inc. (hereafter, "JUI, Inc."), and ROXUL USA, Inc. have agreed that JUI, Inc. and JCDA will fund, acquire, construct and activate a water main line extension appropriate and necessary to serve a facility to be owned and operated by ROXUL USA, Inc.; and,

WHEREAS, JCDA, JUI, Inc. and ROXUL USA, Inc. have agreed that, upon completion of the water main line construction, JUI, Inc. shall operate and maintain said water main line extension to provide adequate potable water service to the Facility, as defined by ROXUL USA, Inc., and that JUI, Inc. shall pay to JCDA a monthly rental fee for use of the constructed extension; and,



WHEREAS, the Parties have agreed that, for the sake of efficiency, time and cost savings, the City shall design, bid and oversee construction of the water line extension specifically described in the October 17, 2017 Memorandum of Understanding made between JCDA, JUI, Inc., and ROXUL USA, Inc. This MOU is attached at "Exhibit 1", and incorporated into this Agreement; and,

WHEREAS, upon request of JCDA, the City has incurred, and will continue to incur costs to fulfill the commitments of the October 17, 2017 MOU and to construct the water line extension.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS OF MOU

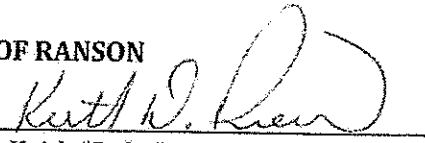
1. The underlying terms and conditions of the Memorandum of Understanding between JCDA, Jefferson Utilities and Roxul USA dated October 17, 2017, and attached to this MOU at "Exhibit 1" shall remain in full force and effect.
2. JCDA assigns to the City, and the City accepts, the obligations, rights and responsibilities pursuant Paragraph 3a, 3b and 3c of Exhibit 1.

3. During construction and performance by City of said transferred obligations, title to the water line and its fixtures and appurtenances, and associated risk of loss, shall remain with JCDA. Upon satisfaction of the terms and conditions of the MOU (Exhibit 1), and issue of a certificate of substantial completion of the water line extension, the City's obligations and responsibilities regarding the water line extension shall terminate.
4. JCDA pledges to fully compensate the City for, and hold the City fully harmless from, any and all costs associated with the City's work described herein. The City shall provide a detailed invoice or invoices to JCDA for work performed by the City, which invoice(s) shall be paid within thirty (30) days of presentation by the City.
5. JCDA shall, throughout the course of this work, maintain adequate insurance against loss, damage or injury arising from the work. Furthermore, to the full extent permitted by law, JCDA shall indemnify and hold harmless the City from and against any and all liabilities and expenses arising from the work, excluding liabilities that may arise from alleged or adjudged negligent acts of the City and/or its agents.

IN WITNESS WHEREOF, with intent to be legally bound by these provisions, the Parties hereto have caused this MOU to be executed by their duly authorized officers/agents on the day and year first above written.

CITY OF RANSON

By: _____



Keith "Duke" Pierson
Mayor

JEFFERSON COUNTY DEVELOPMENT AUTHORITY

By: _____



Name: _____

Eric Lewis

Its: _____

President

JEFFERSON COUNTY DEVELOPMENT AUTHORITY

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

BOND ORDINANCE

Table of Contents

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

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

ARTICLE II

**AUTHORIZATION OF ACQUISITION AND CONSTRUCTION
OF THE PROJECT; AUTHORIZATION AND APPROVAL OF LEASE AGREEMENT**

Section 2.01	Authorization of Acquisition and Construction of the Project
Section 2.02	Authorization and Approval of Lease Agreement

ARTICLE III

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

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



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

ARTICLE IV

[RESERVED]

ARTICLE V

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

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

ARTICLE VI

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

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

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

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

Section 7.21 Contracts; Change Orders and Public Releases

ARTICLE VIII

INVESTMENT OF FUNDS; USE OF PROCEEDS

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

ARTICLE IX

DEFAULT AND REMEDIES

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

ARTICLE X

PAYMENT OF BONDS

Section 10.01 Payment of Bonds

ARTICLE XI

MISCELLANEOUS

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

SIGNATURES
CERTIFICATION

EXHIBIT A Form of Lease and Purchase Agreement

JEFFERSON COUNTY DEVELOPMENT AUTHORITY

BOND ORDINANCE

ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A PUBLIC WATERWORKS SYSTEM OF THE JEFFERSON COUNTY DEVELOPMENT AUTHORITY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE OF NOT MORE THAN \$7,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF LEASE REVENUE BONDS, SERIES 2018 A (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE JEFFERSON COUNTY DEVELOPMENT AUTHORITY:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 7, Article 12 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

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

A. The Jefferson County Development Authority (the "Issuer") is a public agency and public corporation of the State of West Virginia in Jefferson County of said State.

B. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired, constructed and equipped a public waterworks system of the Issuer, at an estimated cost of not more than \$7,330,000, specifically including, but not limited to, a water transmission line, water storage tank and booster station, and all necessary appurtenant facilities, to serve certain tracts of real property totaling approximately 400 acres located north of West Virginia State Route 9 in Bardane, Jefferson County, known as "Jefferson

Orchards," including, without limitation, the manufacturing facility which Roxul USA, Inc., is constructing thereon (collectively, the "Project") (the Project and any further additions, betterments and improvements thereto financed and constructed by the Issuer are herein called the "System"), in accordance with the plans and specifications prepared for the Issuer.

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

D. It is deemed necessary for the Issuer to issue its Lease Revenue Bonds, Series 2018 A (West Virginia Infrastructure Fund), in the total aggregate principal amount of not more than \$7,000,000 (the "Series 2018 A Bonds"), to permanently finance a portion of the costs of acquisition, construction and equipping of the Project. The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2018 A Bonds prior to and during acquisition, construction and equipping of the Project and for a period not exceeding 6 months after completion of acquisition, construction and equipping of the Project; engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2018 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition, construction and equipping of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2018 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of acquisition, construction and equipping of the Project is not less than 40 years.

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

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

H. All revenues received by the Issuer under and pursuant to a Lease and Purchase Agreement (the "Lease Agreement"), by and between the Issuer and Jefferson Utilities,

Inc. (the "Company"), whereby the System is leased to the Company shall be pledged to the repayment of the principal of the Series 2018 A Bonds (collectively, the "Lease Revenues"). Pursuant to the Lease Agreement, the Company has agreed to operate and maintain the System at its own expense. All customers which receive potable water service from the System shall be customers of the Company. No other revenues or funds of the Issuer or the Company are pledged to, or available for, payment of the debt service on the Series 2018 A Bonds.

I. The Issuer has complied or, pursuant to the terms of the Lease Agreement, the Company has complied, with all requirements of State law and the Loan Agreement relating to authorization of the acquisition, construction, equipping and operation of the Project and the System and issuance of the Series 2018 A Bonds, or will have so complied prior to issuance of any of the Series 2018 A Bonds, including, among other things, the obtaining of approvals from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2018 A Bonds or such final order will not be subject to appeal.

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

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

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

"Act" means, collectively, Chapter 7, Article 12 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

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

"Authorized Officer" means, singularly, the President and the Executive Director of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

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

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

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

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

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

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

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

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

"Company" means Jefferson Utilities, Incorporated, a West Virginia corporation and public water utility certificated by the Public Service Commission of West Virginia.

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

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

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

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

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

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

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

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

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

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

"Issuer" means the Jefferson County Development Authority, a public agency and public corporation of the State of West Virginia in Jefferson County of said State, and unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Lease Agreement" means the Lease and Purchase Agreement, to be dated as of the date of closing on the Series 2018 A Bonds, by and between the Issuer and the Company, substantially in the form attached hereto as Exhibit A and incorporated herein by reference, with such additions, amendments and modifications as an Authorized Officer of the Issuer may approve.

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

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

"MOU" means the Memorandum of Understanding dated October 17, 2017 by and among Roxul USA, Inc., the Issuer and the Company.

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

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

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

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

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

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

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

"Registrar" means the Bond Registrar.

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

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

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

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

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

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

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2018 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2018 A Bonds, and not so included, may be included in another Supplemental Resolution.

"System" means the complete public waterworks facilities of the Issuer and shall include the Project and any additions, betterments and improvements thereto hereafter acquired or constructed by the Issuer for the System from any sources whatsoever.

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

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

ARTICLE II

AUTHORIZATION OF ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT; APPROVAL OF LEASE AGREEMENT

Section 2.01. Authorization of Acquisition, Construction and Equipping of the Project. There is hereby authorized and ordered the acquisition, construction and equipping of the Project, at an estimated cost of not to exceed \$7,330,000, in accordance with the plans and specifications which have been provided by the Company and prepared by Urban, Ltd. The proceeds of the Series 2018 A Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the Council.

The cost of the Project is estimated not to exceed \$7,330,000, of which approximately \$7,000,000 will be obtained from proceeds of the Series 2018 A Bonds, and approximately \$330,000 will be obtained from proceeds of a contribution from the Company.

Section 2.02. Authorization and Approval of Lease Agreement. The Lease Agreement by and between the Issuer and the Company, substantially in the form of Exhibit A, is hereby authorized and approved with such amendments, modifications and changes as shall be approved by an Authorized Officer of the Issuer. The officers of the Issuer are hereby authorized to execute the Lease Agreement.

ARTICLE III

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

Section 3.01. Authorization of Bonds. For the purposes of paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2018 A Bonds of the Issuer. The Series 2018 A Bonds shall be issued as a single bond, designated "Lease Revenue Bond, Series 2018 A (West Virginia Infrastructure Fund)", in the principal amount of not more than \$7,000,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2018 A Bonds shall be deposited in or credited to the Series 2018 A Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

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

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

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

Section 3.03. Execution of Bonds. The Series 2018 A Bonds shall be executed in the name of the Issuer by the President, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed the Series 2018 A Bonds shall cease to be such officer of the Issuer before the Series 2018 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any such Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2018 A Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Series 2018 A Bonds shall be conclusive evidence that such Series 2018 A Bonds has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2018 A Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 2018 A Bonds issued hereunder.

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

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

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

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

cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2018 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate (where applicable) and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2018 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Lease Revenues as herein provided. No holder or holders of the Series 2018 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2018 A Bonds or the interest, if any, thereon. The Issuer has no taxing power.

Section 3.08. Bonds Secured by Pledge of Lease Revenues. The payment of the debt service of all Series 2018 A Bonds shall be secured by a first lien on the Lease Revenues. Such Lease Revenues are irrevocably pledged to the payment of the outstanding principal of the Series 2018 A Bonds and to make all other payments provided for in the Bond Legislation. Any and all remaining principal outstanding on the Series 2018 A Bonds on the maturity date thereof, which will be not more than forty (40) years from the date issuance, shall, pursuant to the terms of the Loan Agreement, be considered a grant to the Issuer and such outstanding principal shall be forgiven as of the maturity date.

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

- (1) If other than the Authority, a list of the names in which the Series 2018 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;
- (2) A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2018 A Bonds to the original purchasers;

- (3) An executed and certified copy of the Bond Legislation;
- (4) An executed copy of the Loan Agreement;
- (5) A copy of the Lease Agreement; and
- (6) The unqualified approving opinion of bond counsel on the Series 2018 A Bonds.

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

[Remainder of Page Intentionally Blank]

(FORM OF SERIES 2018 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
JEFFERSON COUNTY DEVELOPMENT AUTHORITY
LEASE REVENUE BOND, SERIES 2018 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR- 1

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That this ___ day of ___, 2018, the JEFFERSON COUNTY DEVELOPMENT AUTHORITY, a public agency and public corporation of the State of West Virginia in Jefferson County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of _____ DOLLARS (\$ _____), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference.

The Series 2018 A Bonds are originally issued in the form of one bond, registered to the Authority. No payments of principal are due on the Series 2018 A Bonds for at least one year after the Closing Date. The Series 2018 A Bonds mature on _____, 2058 and bear no interest. Commencing _____ 1, 2019, Lease Revenues received by the Issuer shall be paid each month towards the outstanding principal of the Series 2018 A Bonds; provided, however, if the Roxul USA, Inc. Facility ("Roxul") is not operational on _____ 1, 2019, then the payments shall be deferred quarterly until such time as Roxul is operational. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). Pursuant to the terms of the loan agreement by and between the Authority on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and the Issuer dated _____, 2018 (the "Loan Agreement"), any and all remaining principal outstanding on the Series 2018 A Bonds on _____, 2058, shall be considered a grant to the Issuer and forgiven.

This Series 2018 A Bond is issued (i) to pay a portion of the costs of acquisition, construction and equipping of a public waterworks system of the Issuer, specifically including but not limited to, a water transmission line, water storage tank and booster station, and all necessary appurtenant facilities, to serve the tracts of real property totaling approximately 400 acres located north of West Virginia State Route 9 in Bardane, known as "Jefferson Orchards," including, without limitation, the manufacturing facility which Roxul USA, Inc., plans to construct thereon (collectively, the "Project"); and (ii) to pay certain costs of issuance of the Series 2018 A Bonds

(the "Series 2018 A Bonds") and related costs. The Project and any further additions, betterments or improvements thereto financed and constructed by the Issuer are herein called the "System." This Series 2018 A Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 7, Article 12 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2018, and a Supplemental Resolution duly adopted by the Issuer on _____, 2018 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of Additional Parity Bonds under certain conditions, and such Additional Parity Bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Series 2018 A Bonds under the Bond Legislation.

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

This Series 2018 A Bond is payable only from and secured by a pledge of the Lease Revenues (as defined in the Bond Legislation), and from unexpended proceeds of the Series 2018 A Bonds. This Series 2018 A Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same except from said special fund provided from the Lease Revenues and unexpended proceeds of the Series 2018 A Bonds. The Issuer has entered into certain further covenants with the registered owners of the Series 2018 A Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Series 2018 A Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Series 2018 A Bond is transferable, as provided in the Bond Legislation, only upon the books of United Bank, Charleston, West Virginia, as registrar (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Series 2018 A Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Series 2018 A Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Series 2018 A Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Series 2018 A Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Series 2018 A Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Series 2018 A Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that all Lease Revenues have been pledged to, and will be set aside into said special fund by the Issuer for, the payment of the principal of this Series 2018 A Bond.

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

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the JEFFERSON COUNTY DEVELOPMENT AUTHORITY has caused this Series 2018 A Bond to be signed by its President, and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Series 2018 A Bond to be dated as of the day and year first written above.

[SEAL]

President

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

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

Date: _____, 2018.

UNITED BANK,
as Registrar

Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL \$ _____

(Form of)

ASSIGNMENT

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

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

Dated: _____, 20__.

In the presence of:

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

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

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

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

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

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

- (1) Series 2018 A Bonds Sinking Fund

Section 5.03. Lease Revenues; Flow of Funds. A. All Lease Revenues received each month shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation. All Lease Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

(1) The Issuer shall, on the first day of each month, transfer from the Revenue Fund and remit to the Commission all Lease Revenues on deposit therein so long as any principal of the Series 2018 A Bonds remains outstanding.

(2) After all the foregoing provisions for use of monies in the Revenue Fund have been fully complied with, any monies remaining therein and not permitted to be retained therein may be used to prepay principal of the Series 2018 A Bonds, for any payment required under this Bond Legislation or for any lawful purpose of the System.

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

All investment earnings on monies in the Series 2018 A Bonds Sinking Fund shall be applied to the payment of principal of the Series 2018 A Bonds, not less than once each year, by the Commission.

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

The Commission is hereby designated as the fiscal agent for the administration of the Series 2018 A Bonds Sinking Fund and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

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

The Series 2018 A Bonds Sinking Fund shall be used solely and only for, and is hereby pledged for, the purpose of paying the outstanding principal on the Series 2018 A Bonds under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if such day is not a business day, then the first business day of each month) deposit, or shall cause to be deposited by the Company, with the Commission all Lease Revenues from the prior month and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

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

D. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the

Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require such additional sums as shall be necessary to pay their respective charges, fees and expenses then due.

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

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

ARTICLE VI

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

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

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

B. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2018 A Bonds shall be used as directed in writing by the Council.

Section 6.02. Disbursements From the Bond Construction Trust Fund. The Issuer shall each month provide the Council with a requisition for the costs incurred for the Project, together with such documentation as the Council shall require. Payments for costs of the Project shall be made monthly.

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

- (i) None of the items for which the payment is proposed to be made has been requested from another funding source;
- (ii) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a cost of the Project;
- (iii) Each of such costs has been otherwise properly incurred; and

- (iv) Payment for each of the items proposed is then due and owing.

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

The Issuer shall expend all proceeds of the Series 2018 A Bonds within 3 years of the date of issuance of the Council's bonds, if any, the proceeds of which were used to make the loan to the Issuer.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

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

Section 7.02. **Bonds not to be Indebtedness of the Issuer.** The Series 2018 A Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation.

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

Section 7.04. **Rates and Charges.** Pursuant to the Memorandum of Understanding by and among Roxul USA, Inc, the Issuer, and the Company (the "MOU") and the Lease Agreement the rates and charges for the System shall be the same tariff as all water customers of the Company as may be in effect from time to time.

Section 7.05. **Sale of the System.** Except as provided in the Lease Agreement, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof. Additionally, so long as the Series 2018 A Bonds are outstanding and except as provided in the Lease Agreement, as otherwise required by law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall

be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds of any such sale, lease, mortgage or other disposition of the System shall, with respect to the Series 2018 A Bonds, immediately be remitted to the Commission for deposit in the Series 2018 A Bonds Sinking Fund, and the Issuer shall direct the Commission to apply such proceeds to the payment of the outstanding principal of the Series 2018 A Bonds. Any balance remaining after payment of the outstanding principal of the Series 2018 A Bonds shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of Lease Revenues.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$100,000, the Issuer shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds derived from any such sale shall be deposited in the Series 2018 A Bonds Sinking Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$100,000 but not in excess of \$250,000, the Issuer shall first, in writing, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and the Governing Body may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property. The proceeds derived from any such sale shall be deposited in the Series 2018 A Bonds Sinking Fund. Payment of such proceeds into the Series 2018 A Bonds Sinking Fund shall not reduce the amounts required to be paid into such funds by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$250,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders of all Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

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

The Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over, on a parity with, or junior to the lien of the Series 2018 A Bonds upon the Lease Revenues, or upon the System or any part thereof.

Section 7.07. Additional Parity Bonds. No Additional Parity Bonds payable from the Lease Revenues, shall be issued after the issuance of the Series 2018 A Bonds, except with the prior written consent of the Authority under the conditions, and in the manner, permitted by the Authority. All Additional Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2018 A Bonds.

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

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

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

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

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

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

may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file, or shall cause the Company to file, with the Council and the Authority, or any other original purchaser of the Series 2018 A Bonds, an annual report containing the following:

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

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

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

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

Section 7.09. [RESERVED]

Section 7.10. Operation and Maintenance of the System. Pursuant to the MOU and the Lease Agreement the Company shall operate and maintain the System.

Section 7.11. Engineering Services and Operating Personnel. The Issuer shall obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement,

stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the Council, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the Council is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

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

The Company shall, pursuant to the terms of the MOU and the Lease Agreement, be responsible for providing employees to operate and maintain the System who are appropriately licensed and/or certified.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System. To the extent operation and maintenance is performed by the Company, the Issuer shall enforce the Lease Agreement to fulfill compliance with this covenant.

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

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

reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 7.14. No Free Services. The Issuer will not, nor shall the Company be permitted, to render or cause to be rendered any free services of any nature by the System; and in the event the Issuer or the Company, or any department, agency, instrumentality, officer or employee of either party shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee.

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

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

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

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

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

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

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

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

Section 7.16. [RESERVED].

Section 7.17. Completion, Operation and Maintenance of Project; Permits and Orders. The Issuer shall complete acquisition, construction and equipping of the Project as promptly as possible.

Pursuant to the Lease Agreement, the Company has agreed to operate and maintain the System at its own expense.

Pursuant to the MOU, the Company has obtained, and either will or has transferred to the Issuer, all permits required by state and federal laws for the acquisition and construction of the Project, and all orders and approvals required by State law necessary for the acquisition and construction of the Project. The Company is, pursuant to the Lease Agreement, responsible to obtain all permits and approvals required by state or federal law for the operation of the System.

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

Section 7.19. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2018 A Bonds, a statutory mortgage lien upon the System is granted and

created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2018 A Bonds.

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

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

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

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

ARTICLE VIII

INVESTMENT OF FUNDS; USE OF PROCEEDS

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

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

the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

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

Section 8.02. Certificate as to Use of Proceeds: Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2018 A Bonds as a condition to issuance of the Series 2018 A Bonds. The Issuer shall annually furnish to the Authority, information with respect to the Issuer's use of the proceeds of the Bonds and any additional information requested by the Authority.

ARTICLE IX

DEFAULT AND REMEDIES

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

- (1) If default occurs in the due and punctual payment of the Lease Revenues to the Commission; or
- (2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2018 A Bonds set forth in this Bond Legislation, any Supplemental Resolution or in the Series 2018 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or
- (3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Series 2018 A Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid Lease Rentals; (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the

making and collection of sufficient rates or charges for services rendered by the System; (iii) bring suit upon the Series 2018 A Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Series 2018 A Bond; and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Series 2018 A Bonds, or the rights of such Registered Owners.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Series 2018 A Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the collection of Lease Revenues and the payment of Lease Revenues to the Commission and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the Lease Revenues or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to collect Lease Revenues and apply Lease Revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

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

Any receiver appointed as provided herein shall, subject to, and in conformance with, the rights of the Issuer under the Lease Agreement, hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. With the exception of the transaction effectuated by the Lease Agreement, such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited

to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of the System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holder of the Series 2018 A Bonds, the entire principal of the Series 2018 A Bonds in the manner stipulated therein and in this Bond Legislation, then the pledge of Lease Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Series 2018 A Bonds, shall thereupon cease, terminate and become void and be discharged and satisfied.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2018 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2018 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2018 A Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2018 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or the rate of interest, if any, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the Lease Revenues herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest, if any, on the Series 2018 A Bonds from gross income of the holders thereof.

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

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent

jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2018 A Bonds.

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

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

ISSUER:

Jefferson County Development Authority
1948 Wiltshire Road, Suite 4
Kearneysville, West Virginia 25430
Attention: Executive Director

COMPANY:

Jefferson Utilities, Inc.
270 Industrial Boulevard
Kearneysville, West Virginia 25430
Attention: President

AUTHORITY:

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

COUNCIL:

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

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

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

Section 11.07. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the enactment of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in

full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the President, the Secretary and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

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

[Remainder of Page Intentionally Blank]

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

Passed on First Reading: -

Passed on Second Reading: -

Passed on Final Reading
Following Public
Hearing: -

JEFFERSON COUNTY DEVELOPMENT AUTHORITY

President

EXHIBIT A

Form of Lease and Purchase Agreement

LEASE AND PURCHASE AGREEMENT

THIS LEASE AND PURCHASE AGREEMENT (the "Agreement") entered into as of the ____ day of _____ 2018, by and between JEFFERSON COUNTY DEVELOPMENT AUTHORITY, hereafter referred to as "LESSOR" or "JCDA" and JEFFERSON UTILITIES, INC., hereafter referred to as "LESSEE" or "JUI," each a "Party," collectively the "Parties".

W I T N E S S E T H

WHEREAS, the LESSOR is a public corporation of the State of West Virginia created by The County Commission of Jefferson County under Chapter 7, Article 12, of the West Virginia Code for the express purpose, among others, of promoting, developing and advancing business prosperity and economic welfare of Jefferson County, West Virginia, its citizens and its industrial complex;

WHEREAS, the LESSEE is a privately-held corporation certificated by the Public Service Commission of West Virginia as a public utility to provide potable water service to approximately 3,000 customers in areas of Jefferson County, West Virginia, through the LESSEE's potable water treatment, storage, transmission and distribution system;

WHEREAS, there is an approximately 400-acre tract of real property located in Jefferson County, West Virginia, in the vicinity of West Virginia State Route 9 that is commonly known as Jefferson Orchards (the "Jefferson Orchards Site");

WHEREAS, Roxul USA, Inc. ("Roxul") plans to acquire, construct, own and operate a manufacturing facility (the "Facility") on a parcel of real property comprising approximately 130 acres which is a part of the Jefferson Orchards Site;

WHEREAS, in order to provide potable water service to the Jefferson Orchards Site, the LESSOR and LESSEE have agreed to cooperate in the financing and design, acquisition, construction and equipping of a Facilities that will allow LESSEE to provide potable water service to the Jefferson Orchards Site (collectively, the "Project");

WHEREAS, a portion of the costs of design, acquisition, construction and equipping of the Project shall be financed from the proceeds of the LESSOR's Lease Revenue Bonds, Series 2018 A (West Virginia Infrastructure fund) (the "Bonds");

WHEREAS, the obligations of the Parties and Roxul related to the Project and the Bonds are memorialized in a Memorandum of Understanding ("MOU") entered in to among the Parties and Roxul, and hereby incorporated herein by reference;

WHEREAS, the Parties previously entered into a lease agreement dated _____, 2018, wherein JUI leased to JCDA its interest in certain tracts or parcels of real property necessary for the extension of water service to Roxul at the Facility, and hereby incorporated herein by reference;

WHEREAS, the repayment of the principal of the Bonds will be secured by payments made by JUI to JCDA pursuant to the terms of this Agreement;

WHEREAS, in the event that there is a conflict between the terms of the MOU and this Agreement, the terms of the MOU shall control the agreement between the Parties.

NOW, THEREFORE, for and in consideration of the rentals herein reserved and agreed to be paid by the LESSEE, LESSOR does demise and let unto the LESSEE, and LESSEE takes and accepts, the following demised premises, which consist of certain tracts or parcels of real property situate in Jefferson County, West Virginia that include a Facilities comprised of approximately 18,050 linear feet of 16-inch water line, a 795,000 gallon water storage tank, a 1,200 gallon per minute triplex booster station, an altitude valve vault (collectively, the "Facilities") which are necessary for the Project (hereafter such certain tracts or parcels of real property are collectively referred to as "Demised Premises" as such Demised Premises are further shown and described on Exhibit A).

1. TERM OF AGREEMENT; CONVEYANCE UPON TERMINATION OF AGREEMENT. This Agreement shall expire on the earlier of: (i) a period of forty (40) years, beginning upon the date a registered professional engineer issues a certificate of substantial completion of the design, acquisition, construction and equipping of the Project; or (ii) the payment in full of the principal on the Bonds. In addition, in the event the closing on the Bonds does not occur by June 1, 2019, this Agreement shall terminate. Upon the expiration or termination of this Agreement, the LESSOR shall convey the entirety of the Demised Premises to the LESSEE for the sum of \$1.00. Upon conveyance of the Demised Premises from the LESSOR to the LESSEE, the obligation to pay the Use Fee (defined below) shall terminate.

2. RENTALS. LESSEE covenants and agrees to pay a monthly rental fee equal to \$2.88 per 1,000 gallons of water sold in the month immediately prior to all customers served by the LESSEE on the Jefferson Orchards Site (the "Use Fee"). LESSEE shall have the right to provide potable water service to other customers from the Facilities that are not located on the Jefferson Orchards Site, provided, however, that in providing such service to any additional customer(s) from the Facilities, LESSEE agrees to maintain the capacity to deliver not less than 500,000 gallons per day to the Jefferson Orchards Site.

3. USE OF PREMISES; RIGHT TO SUBLEASE. LESSEE shall have the exclusive right to: (i) use and occupy the Demised Premises for the purposes of providing potable water service to the public; and (ii) sublease the Demised Premises to the LESSOR as part of the Project pursuant to the terms of this Agreement.

4. OPERATION, MAINTENANCE AND REPAIR. Throughout the LESSEE's possession of the Demised Premises, the LESSEE agrees to operate, maintain, repair, and replace (i) the Facilities, and (ii) all water transmission, distribution, pumping, storage, treatment and other associated facilities added to the Facilities.

5. OWNERSHIP AND POSSESSION. LESSOR covenants that it is lawfully seized of the Demised Premises; it has full right and power to enter into the lease described in this Agreement for the term provided and upon all of the conditions herein contained; that it will deliver full and complete possession of the Demised Premises upon commencement of the term of the lease in this Agreement; and, that upon LESSEE paying the said rentals, LESSEE shall and may peaceably and quietly have, hold, and enjoy the Demised Premises for the said terms and for the uses and purposes leased.

6. TAXES AND ASSESSMENTS. LESSOR shall pay when due all taxes and assessments upon the Demised Premises, and upon any improvements thereon, which are assessed during the term of this Agreement. LESSEE shall pay, or shall cause JCDA to pay pursuant to the terms of this Agreement, when due all taxes and assessments upon the personal property of the Project situated upon the Demised Premises.

7. INSURANCE - LIABILITY. LESSEE shall maintain insurance on the Facilities and the Demised Premises. No later than the commencement of the term of the lease in the Agreement, LESSEE shall secure and pay all premiums for, keep, and maintain in force and effect: (a) property casualty insurance with a limit equal to the depreciated value of the Demised Premises; (b) commercial general liability insurance with a minimum limit of \$1,000,000; (c) automobile coverage with a \$1,000,000 liability limit and at least \$1,000,000 in both uninsured and underinsured motorist coverage; (d) boiler and machinery coverage, if applicable; and (e) workers compensation insurance. LESSEE shall further list LESSOR as an additional insured on all applicable insurance policies and provide a copy of the Declarations Page of such policies to LESSOR prior to commencement of the lease term.

8. WAIVER. No waiver of any default of LESSOR or LESSEE hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by LESSOR or LESSEE shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

9. HEADINGS. The headings used in this Agreement are for convenience of the Parties only and shall not be considered in interpreting the meaning of any provision of the Agreement.

10. SUCCESSORS. The provisions of the Agreement shall extend to and be binding upon LESSOR and LESSEE and their respective legal representatives, successors and assigns.

11. CONSENT. LESSOR and LESSEE shall not unreasonably withhold or delay their consent with respect to any matter for which consent is required or desirable under the Agreement.

12. COMPLIANCE WITH LAW. Each Party shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to the each Party's use of the Demised Premises.

13. MISCELLANEOUS. The Agreement shall be construed and enforced pursuant to the laws of the State of West Virginia. The Agreement constitutes the entire agreement and understanding between the Parties. No alteration, amendment or modification of the Agreement may be made except by written agreement signed by the Parties hereto.

[Signature Page Follows]

IN WITNESS WHEREOF the Parties have signed this document on the date first written above:

LESSOR:

JEFFERSON COUNTY DEVELOPMENT AUTHORITY

Date

LESSEE:

JEFFERSON UTILITIES, INC.

Date

STATE OF WEST VIRGINIA
COUNTY OF JEFFERSON, to-wit;

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, whose name is signed to the writing hereto annexed, bearing date the ____ day of _____ 2018, has this day acknowledged the same before me in my said County.

Given under my hand this ____ day of _____ 2018.

My commission expires _____
Notary Public

STATE OF WEST VIRGINIA
COUNTY OF JEFFERSON, to-wit;

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that B. Lee Snyder, President of Jefferson Utilities, Inc., whose name is signed to the writing hereto annexed, bearing date the ____ day of _____ 2018, has this day acknowledged the same before me in my said County.

Given under my hand this ____ day of _____ 2018.

My commission expires _____
Notary Public

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Board of the
JEFFERSON COUNTY DEVELOPMENT AUTHORITY on the ____ day of
_____, 2018.

Dated: _____, 2018.

[SEAL]

Secretary

450600.00071



**Jefferson County Development Authority
Regular Board Meeting
Tuesday, September 18, 2018
3:00 P.M.
JCDA Conference Room
1948 Wiltshire Road
Kearneysville, WV 25430**

1. Public Comment for all issues other than Rockwool and the Water Bond Ordinance
(Speakers must sign up no later than 2:45pm and will each be limited to 2 minutes. No public comment on Rockwool and or the Water Bond Ordinance will be allowed due to the Public Hearing – Agenda Item 2)
2. Public Hearing Regarding Proposed Ordinance, described below
(Speakers do not need to sign up prior to 2:45. Speakers will be limited to 2 minutes).
3. To consider on third reading and act upon a proposed Ordinance approving the acquisition, construction and equipping of a potable waterworks storage and distribution system of the Jefferson County Development Authority, such Ordinance titled:

ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A PUBLIC WATERWORKS SYSTEM OF THE JEFFERSON COUNTY DEVELOPMENT AUTHORITY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE OF NOT MORE THAN \$7,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF LEASE REVENUE BONDS, SERIES 2018 A (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.



**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 12th day of July 2018.

CASE NO. 18-0657-W-ECN

JEFFERSON UTILITIES, INC.

Application for an emergency certificate of convenience and necessity to construct certain additions and improvements to its existing waterworks system (Jefferson Orchards Site - ROXUL USA Inc.)

COMMISSION ORDER

By this Order, the Commission approves the Jefferson Utilities, Inc., application for an emergency certificate of convenience and necessity to extend water service to a new manufacturing facility subject to the conditions described herein.

BACKGROUND

On May 10, 2018, Jefferson Utilities, Inc. (JUI) filed an Application for an emergency certificate of convenience and necessity to construct certain additions and improvements to its Jefferson Orchards site to serve ROXUL USA Inc. (ROXUL) manufacturing site (Facility). Specifically, the water line extension will include installation of approximately 18,050 linear feet of 16-inch water line, a 795,000 gallon water storage tank, a 1,200 gallon per minute triplex pressure booster station, an altitude valve vault, and all necessary appurtenances (Water Line Extension or Project).

According to the filing, the estimated cost of the Water Line Extension is \$4,850,000. Construction of the Water Line Extension will be funded by the Jefferson County Development Authority (JCDA) through a \$4,520,000 loan from the West Virginia Infrastructure and Jobs Development Council (WVIJDC) for a term of forty years at no more than 1.0 percent interest. JUI will provide up to an aggregate maximum cost of \$330,000 for all engineering, design, permits, and rights-of-way and easements for the Water Line Extension, including all required water meters and telemetry. JUI stated that it will fund its \$330,000 contribution from cash flow and does not plan to borrow funds. Additionally, WVIJDC determined that the Water Line Extension qualified as an emergency project pursuant to W.Va. Code §31-15A-8(b).

EXHIBIT

5

tabbies

JCDA will own the Water Line Extension, and JUI and JCDA will enter into a long-term lease and purchase agreement giving JUI the exclusive right to use the Water Line Extension for a period of forty years, after which JCDA will sell the Water Line Extension to JUI for \$1.00. Under the Lease and Purchase Agreement between JUI and JCDA (Lease and Purchase Agreement), JUI will operate and maintain the Water Line Extension and pay a monthly use fee to JCDA in the amount of \$2.88 per 1,000 gallons of water sold. The monthly use fee will allow JCDA to satisfy the debt service associated with the WVIJDC loan.

Along with its certificate application, JUI filed, among other things, (i) the Lease and Purchase Agreement, (ii) a Memorandum of Understanding dated October 17, 2017 among ROXUL, JUI, and JCDA outlining the parties' responsibilities with regard to the Water Line Extension and (iii) a Water User Agreement. Under the Water User Agreement, JCDA will (a) acquire, construct and equip the Water Line Extension, (b) borrow from the WDA the necessary funds to finance the portion of the costs associated with the acquisition, construction, and equipping of the Water Line Extension over and above the contribution to such costs by JUI of \$330,000 and (c) enter into an operation and maintenance agreement with JUI whereby JUI will operate and maintain the Water Line Extension to provide potable water service to the facility, and pay a monthly use fee to JCDA.

JUI requested that the Commission issue a certificate of convenience and necessity to permit construction of the Water Line Extension, waive the requirement to file a Rule 42 financial exhibit, waive any requirement for a hearing on the Application, and retain this case for decision.

On May 10, 2018, the Commission issued an Order directing JUI to give public notice of its filing. The Order and the notice stated, among other things, that in the absence of substantial protest, the Commission could waive formal hearing and grant the application.

On May 22, 2018, Commission Staff filed its Initial Joint Staff Memorandum. Staff recommended waiving the filing of a Rule 42 exhibit and suggested several modifications to the Lease and Purchase Agreement.

On June 27, 2018, Staff filed its Final Joint Staff Memorandum. Staff provided an overview and analysis of the filing. Staff stated that the existing rates, minus the dedicated bond repayment, coupled with the projected usage of the Facility, should provide revenue that is adequate but, not more than adequate, to cover operation and maintenance expenses associated with the Project. Review of the Project plans showed no apparent conflicts with the Commission's Rules for the Government of Water Utilities, 150 C.S.R. 7. Staff stated that the certificate should be contingent on the receipt of all necessary federal, state and local permits and approvals for the proposed

construction, with copies of the permits and approvals to be filed with the Commission on receipt. Construction should not begin until such time as all lands and rights-of-way, all permits and approvals or clearances, and a certificate of convenience and necessity have been issued.

Staff further recommended clarifying language changes to the Water Users Agreement and the Memorandum of Understanding.

Staff stated that no protests had been filed and recommended that the Commission grant JUI a certificate of convenience and necessity pursuant to W.Va. Code §24-2-11 and approve the Project funding in the amount of \$4,850,000 without the need for hearing. Staff stated that approval of the certificate included:

1. Project financing consisting of the following:

JCDA funding	\$4,520,000
JUI contribution	\$ 330,000
2. The Lease and Purchase Agreement.
3. The Water User Agreement with Staff's recommended changes.
4. The Memorandum of Understanding with Staff's recommended changes.
5. This project has been approved by the WVIJDC. Staff recommended that if there are any changes in the plans or scope of the project, JUI must seek Commission approval of such changes. Further, Staff recommends that if there are changes in the rates to be charged associated with the project JUI must also seek Commission approval of those changes. Finally, provided project-related rates remain unchanged, it is not necessary for JUI to seek further Commission approval of changes in project costs or financing. However, under such circumstances Staff recommends that JUI should be required to file an affidavit executed by its certified public accountant verifying that its rates and charges are not affected.
6. JUI shall promptly file a copy of the engineer's certified tabulation of bids for all contracts associated with this project.
7. JUI shall promptly file a copy of the "Certificate of Substantial Completion" for each contract associated with this project.

On July 3, 2018, JUI filed a letter stating that it had no objection to the Staff recommendation.

DISCUSSION

Based upon the review of the foregoing information, the application, and the recommendation of Staff, the Project described in the application for a certificate of convenience and necessity is necessary and appropriate. The Project will provide water service to a new manufacturing facility without any rate impact on existing customers. The certificate should be granted pursuant to W.Va. Code §24-2-11 contingent on JUI filing all outstanding permits as soon as they are available, and the other conditions as set forth above. It is not necessary to hold a hearing in this matter because no protests were received. It is not necessary for JUI to file a Tariff Rule 42 exhibit because rates will not be affected.

FINDINGS OF FACT

1. There is no rate impact of the Project. Application and June 27, 2018 Staff memorandum.
2. The estimated Project cost is \$4,850,000.
3. Construction of the Water Line Extension will be funded by the JCDA through a \$4,520,000 loan from the WVIJDC for a term of forty years at no more than 1.0 percent interest, and JUI will provide up to an aggregate maximum cost of \$330,000 for all engineering, design, permits, and rights-of-way and easements for the Water Line Extension, including all required water meters and telemetry. Application.
4. A notice of the JUI Application was published and no protests were filed in response to the publication.
5. JUI has no objections to the Staff recommendations. July 3, 2018 JUI letter.

CONCLUSIONS OF LAW

1. The proposed Project is convenient and necessary.
2. This is an emergency project in accordance with W.Va. Code §31-15A-8(b). Application.
3. The proposed Project financing is reasonable and should be approved. Furthermore, Tariff Rule 42 requirement should be waived, and no hearing is necessary to decide this case.

4. The Commission should approve the Application as filed pursuant to W.Va Code §24-2-11 contingent on the conditions in the ordering paragraphs.

ORDER

IT IS THEREFORE ORDERED that the Jefferson Utilities, Inc., application for a certificate of convenience and necessity to construct certain additions and improvements to its existing water system, as more fully described in the Application, is granted as conditioned in this Order.

IT IS FURTHER ORDERED that the Project funding by (i) Jefferson County Development Authority through a \$4,520,000 loan from the West Virginia Infrastructure and Jobs Development Council for a term of forty years at no more than 1.0 percent interest and (ii) Jefferson Utilities, Inc. up to an aggregate maximum cost of \$330,000 for all engineering, design, permits, and rights-of-way and easements for the Water Line Extension, including all required water meters and telemetry, is hereby approved.

IT IS FURTHER ORDERED that the Jefferson Utilities, Inc., request for a waiver of Tariff Rule 42 information is hereby granted.

IT IS FURTHER ORDERED that the granting of this application is contingent on Jefferson Utilities, Inc., filing all outstanding project-related permits and approvals, under this case number, as soon those permits and approvals are available.

IT IS FURTHER ORDERED that if there are any changes in the Project plans or scope, as well as the terms of any financing other than grants or loan that impact the rates, Jefferson Utilities, Inc., must seek Commission approval of those changes.

IT IS FURTHER ORDERED if there are any changes in the plans, scope, or terms of financing of the Project, or changes in rates associated with the Project, Jefferson Utilities, Inc., must petition to reopen for Commission approval of such changes. Changes in project costs or financing do not require separate approval if the changes do not affect rates and Jefferson Utilities, Inc. submits an affidavit from a certified public accountant attesting to the lack of rate impact.

IT IS FURTHER ORDERED that within ten days of the date that Jefferson Utilities, Inc. opens bids for the Project, Jefferson Utilities, Inc., shall submit, under this case number, a copy of the bid tabulation prepared for each contract associated with the Project.

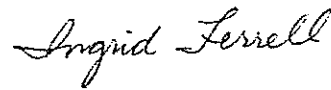
IT IS FURTHER ORDERED that if this Project requires the use of Division of Highway rights-of-way, Jefferson Utilities, Inc., shall comply with all rules and regulations of Division of Highway regarding the use of those rights-of-way.

IT IS FURTHER ORDERED that within ten days of receipt by Jefferson Utilities, Inc., of a certificate of substantial completion issued for each contract associated with the Project, Jefferson Utilities, Inc. shall file, under this case number, a copy of the same.

IT IS FURTHER ORDERED that on entry of this order this case shall be removed from the Commission docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, Teste,



Ingrid Ferrell
Executive Secretary

JJW/sc
180657c.doc

WILLIAM F. ROHRBAUGH
ATTORNEY AT LAW
142 N. Queen Street
P.O. Box 3090
Martinsburg, WV 25402-3090

williamrohrbaugh@outlook.com
www.rohrbaughlaw.com

Tel. No. (304) 596-6640
Fax No. (304) 405-2640

September 13, 2018

Jefferson County Development Authority
c/o Nicolas H. Diehl, Executive Director
1948 Wiltshire Road, Suite No. 4
Kearneysville, WV 25430

Re: Rockwool Water Project

Dear Mr. Diehl:

The Board of Directors of the Jefferson County Development Authority (“JCDA” or “Development Authority”) has asked me to prepare a letter outlining the background of the Rockwool Project (“Project”), summarizing the financing for the Rockwool Water Project (“Water Project”) and discussing the ramifications should the Development Authority refuse to proceed with the Water Project. The discussion of these matters is set forth below.

A. BACKGROUND

Jefferson Orchards Property

In March of 2017, the West Virginia State Development Office (“State Development Office”), an agency of the West Virginia Department of Commerce, approached the City of Ranson (“Ranson”), the JCDA and Jefferson Utilities, Inc. (“JUI”), collectively referred to as the “Jefferson Group,” with a business prospect that had certain requirements for water and sewer service, among others.¹ The State Development Office informed the Jefferson Group that a selection team of the firm of Deloitte Touche Tohmatsu Limited had identified two potential sites for the location of a new manufacturing facility in the Eastern Panhandle of West Virginia. One of the sites was located in Berkeley County, south of the City of Martinsburg. This site,

¹ The identity of the business prospect was not disclosed to Ranson, JCDA and JUI at first. Once Rockwool was identified to the Jefferson Group, the parties agreed to keep Rockwool’s identity secret until the site selection was publicly announced on July 5, 2018.



however, was eliminated, because the Berkeley County water utility did not have sufficient capacity to meet the daily water needs of the business prospect.

The second proposed site, which is the Jefferson Orchards property located in Jefferson County, proved more promising. It was subsequently determined that JUI possessed the capacity to meet the business prospect's water needs, and Ranson possessed the capacity to meet the business prospect's sewer needs.

State Development Office Negotiations

Once it was determined that the Jefferson Orchards property met all of the criteria for the proposed manufacturing facility, the State Development Office was able to reach an agreement with the business prospect, Roxul USA Inc., a subsidiary of the Rockwool Group ("Rockwool"), to bring the manufacturing facility to Jefferson County. Under this agreement, the State Development Office and Rockwool agreed that Rockwool would purchase a site composed of 130 acres of the 400 acre Jefferson Orchards property and build a facility to manufacture rockwool insulation (collectively, the "Rockwool Site"). It was also agreed that the State of West Virginia would provide tax relief to Rockwool for the first ten (10) years of operation.

In order to structure the deal in a manner which would provide the ten year tax relief, the State Development Office and Rockwool further agreed that, upon completion of the manufacturing facility, Rockwool would transfer ownership of the Rockwool Site to a local government entity² which would enter into a Lease/Purchase Agreement with Rockwool for a period of ten years. This arrangement would allow Rockwool to avoid real and personal property taxes until Rockwool reacquired title to the Rockwool Site upon termination of the Lease/Purchase Agreement.

In exchange for ten years of tax relief, the State Development Office required Rockwool to enter into a PILOT Agreement to provide payments to Jefferson County entities to replace a portion of the local taxes which Rockwool will avoid under the Lease/Purchase Agreement. ("PILOT" stands for "Payment in Lieu of Taxes"). Under the PILOT Agreement, which was later signed by the relevant parties, Rockwool agreed to make more than \$2 million in payments to Jefferson County over the ten year period. Upon expiration of the Lease/Purchase Agreement, the Rockwool Site will be taxed at the full assessed value of the real estate, plant and machinery.

Water and Sewer

As an additional part of the agreement between Rockwool and the State Development Office, the West Virginia Infrastructure and Jobs Development Council ("IJDC") agreed to provide low interest loan funding (approximately 1% interest rate) for the necessary water and sewer extensions to serve the Rockwool Site. As a result, Ranson and Rockwool subsequently entered into an agreement for Ranson to construct a sewer extension to the Rockwool Site, and

² As the entity which is charged with the responsibility of facilitating economic development in Jefferson County, the JCDA subsequently agreed to receive and hold title to the Rockwool Site upon completion of the manufacturing facility.

the IJDC agreed to fund excess capacity which will help improve the limited sewer capacity remaining in the Burr Industrial Park, among other things.

Rockwool sought to enter into a similar agreement with JUI in order to extend water utility service to the Rockwool Site, but this proved more difficult because JUI is a privately owned public utility. Under state law, the IJDC is required to charge a market rate of interest to private entities, which in this case would be approximately 5% to 6% interest. At a market interest rate, JUI would have been required to raise the rates of all of its 2,700 customers.

JUI was reluctant to raise its rates to provide water service to the Rockwool Site. As a result, the State Development Office and JUI asked the JCDA to act as a conduit for the low interest loan from the IJDC. Under this arrangement, the JCDA would borrow the low interest funding provided by the IJDC, construct and own the Water Project, and enter into an operating agreement with JUI to operate the Water Project for a term of years after which JUI will become the owner of the Water Project assets.

B. SUMMARY OF THE WATER PROJECT FINANCING

Memorandum of Understanding for the Water Project

On October 17, 2017, Rockwool, JUI and JCDA entered into a Memorandum of Understanding ("MOU") as to the provision of water utility service for the Rockwool Site. The JCDA agreed to construct and own the Water Project, borrow from the IJDC, for a term of forty (40) years, the funds necessary to construct the Water Project, and to enter into an operations and maintenance agreement or other form of agreement for JUI to operate and maintain the Water Project for the forty (40) year term, unless the balance of the loan is paid in full at an earlier date.

The IJDC loan is to be repaid solely from revenues derived from a \$2.88 "Use Fee" which JUI will pay to JCDA for every one thousand gallons of water which JUI sells to Rockwool during the term of the IJDC loan (i.e. 40 years). If the Use Fees exceed projections, the IJDC loan will be retired early and JCDA will transfer ownership of the Water Project to JUI. If the Use Fees do not meet expectations, and a principal balance remains at the end of the term of the loan, the remaining loan principal will be converted to a grant, with no recourse as to JCDA.

Under the terms of the MOU, JUI agreed to contribute up to \$330,000 of the cost of the design of the Water Project and the purchase of all necessary easements and other real property. In addition, JUI agreed to obtain all necessary permits for the Water Project. As of the date of this letter, the design of the Water Project has been completed and all necessary easements, other real estate and permits have been acquired. In addition, the JCDA has hired Thrasher Group to solicit and administer bids and monitor and administer construction of the Water Project. The solicitation of bids has already occurred and bid opening has been scheduled for September 25, 2018.

Water Project Bond Issue

In order to borrow the necessary funds to build the Water Project, the JCDA proposes to issue bonds in an amount up to \$7 million dollars. The West Virginia Water Development Authority ("WDA"), the administrator of the IJDC economic development fund, will purchase and hold the bonds for the benefit of the IJDC.

The final amount of the bonds will be determined after bid opening. The interest rate will be approximately 1% for a term of 40 years, with principal and interest payable solely from the Use Fees to be paid by JUI to JCDA from the sale of water to Rockwool.

C. RAMIFICATIONS IF JCDA FAILS TO PROCEED WITH THE WATER PROJECT

As noted above, JUI has already acquired all of the easements, other property interests and governmental permits which are required in order to construct the Water Project. In addition, the Water Project has been fully designed and is currently out to bid. The final component necessary for construction is funding, and this has been guaranteed by the IJDC. As a result, all of the components are in place to proceed with construction of the Water Project. The question, however, has been raised, what will happen if the JCDA withdraws from the MOU and refuses to act as a conduit for low interest financing to construct the Water Project? The discussion below will attempt to address several facets of this question.

Completion of the Water Project

If the JCDA withdraws from the MOU, or otherwise fails to fulfill its contractual obligations under the MOU, the Water Project will likely still be built. Under the Water Rules promulgated by the Public Service Commission of West Virginia, JUI is a public utility, and as a public utility it is required to serve customers which are capable of being served and may not discriminate between or among customers.

In particular, Water Rule 5.5 governs the extension of water service to the Rockwool Site. 150 CSR 5-5.5. Under this provision, subject to the approval of the Public Service Commission of West Virginia, JUI and Rockwool could enter into an Alternate Mainline Extension Agreement pursuant to which either party could construct the Water Project pursuant to any funding scenario which is agreed between the parties. JUI could obtain a market rate loan from the IJDC, which has already pledged the funds, a bank or any other willing lender. This alternative, however, is problematic, because market rate financing would require JUI to raise the water rates paid by all of its customers, an outcome which does not appear to be acceptable to JUI. As an alternative, Rockwool could fund or finance the construction of the Water Project, but this would be a significant departure from the agreement between Rockwool and the State Development Office and would increase Rockwool's costs by several million dollars. If this is the only way to obtain water service at the Rockwool Site, Rockwool would likely incur the costs and seek to recover them as damages in a civil action.

Should JUI and Rockwool be unable to come to terms under an Alternate Mainline Extension Agreement, Rockwool could avail itself of the primary provisions of Water Rule 5.5 and make a formal request for water service by JUI. Under this provision, JUI would be required to pay a portion of the project costs equivalent to 6 times the revenue which would be derived from Rockwool's estimated annual usage (subject to leakage adjustments). Due to the significant amount of water which Rockwool estimates it will use per day (125,000 gpd) it is likely that JUI would be required to pay a significant portion, if not most, of the cost of the line extension. Under this scenario, JUI would be forced to obtain market rate financing and would have no choice but to raise the water rates paid by all of its customers. In addition, JUI may seek to recover the increased costs of the water line extension as damages in a civil action.

It should also be noted, in the event that low interest financing becomes unavailable due to a failure by the JCDA to borrow the low interest IJDC funds and construct the Water Project, the capacity of the water line extension will likely be reduced. The existing Water Project contains excess capacity which is intended to be used to connect other existing structures and future development to the water line. If low interest financing is not available, Rockwool and JUI will likely agree to reduce the capacity of the water line in order to limit costs.

Damages

If the JCDA does not proceed with the financing of the bonds for the Water Project, water service to the Rockwool Site could be delayed, but not prevented. Rockwool, however, would likely incur more costs than it would have under the terms of the MOU, and these additional costs could reach into the millions of dollars. In addition, any delay in opening the Rockwool manufacturing facility caused by the JCDA's refusal to proceed with the Water Project could result in substantial lost profits. Both the additional costs incurred in completing the Water Project and lost profits from delay are items which could be asserted by Rockwool as damages in any civil action resulting from JCDA's failure to proceed with the Water Project.

It is impossible, at this time, to calculate Rockwool's potential damages should the JCDA refuse to proceed with the Water Project, but in a letter date September 12, 2018, to the Jefferson County Commission, legal counsel for Rockwool stated that:

To date, ROCKWOOL has spent more than \$25 million in the selection and development of its Ranson site, and ROCKWOOL will suffer great economic injury should actions taken by Jefferson County delay the project. Indeed damages arising from a material delay of the project could exceed \$100 million.

Letter from James A. Walls to the Jefferson County Commission, dated September 12, 2018.

In addition to damages which could be alleged by Rockwool, JUI would also likely incur additional costs related to project delays and increased financing costs resulting from a refusal by JCDA to proceed with the Water Project. These potential damages could reach 7 figures, as well.

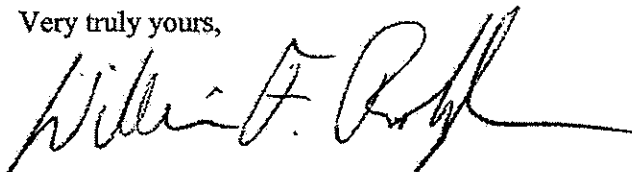
Should JCDA abandon the terms of the MOU and refuse to proceed with the Water Project, Rockwool and JUI may incur the costs discussed above, and others, which they may seek to recover from the JCDA. In order to attempt to collect any alleged damages, Rockwool and/or JUI would have to file a civil action in the circuit court of Jefferson County which the JCDA would be required to defend. The JCDA would want to submit such a civil action as a claim to its insurance carrier, but liability insurance policies typically do not cover breaches of contract (especially where it is a willful act). As a result, it is unlikely that the JCDA's insurance carrier would pay the costs of its legal defense or indemnify it in the event of a settlement or verdict.

Finally, there is a significant risk that individual board members could incur personal liability for the damages which could be alleged in the event that the JCDA refuses to proceed with the Water Project. Although there do not appear to be any cases on point pertaining to volunteer public boards in West Virginia, other states have recognized that the members of non-profit boards, at a minimum, owe a fiduciary duty to the entity they govern, and this fiduciary duty includes a duty of care, a duty of loyalty and a duty of obedience. The duty of care can be rather broad, but at its heart, it is a duty to perform due diligence and to protect the assets of the entity. The duty of loyalty means that the directors must put the interests of the entity above their own personal interests, at all times. The duty of obedience means that the directors must ensure that the entity doesn't engage in illegal or unauthorized activities and fulfills its obligations.

Although there do not appear to be any cases directly on point in West Virginia, it is established law that "[t]he fiduciary duty is '[a] duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person. It is the highest standard of duty implied by law[.]' " Elmore v. State Farm Mutual Auto Ins. Co., 202 W.Va. 430, 435, 504 S.E.2d 893,898 (1998) (quoting Black's law Dictionary 625 (6th ed. 1990)); Napier v. Compton, 210 W.Va. 594, 598, 558 S.E.2d 593, 597 (per curiam) (2001); Manor Care, Inc. v. Douglas, 234 W.Va. 57, 77, 763 S.E.2d 73, 93 (W. Va. 2014). Although it is impossible to state with certainty, in the event that the JCDA willfully breaches its obligations under the MOU, which breach results in heavy money damages being assessed against the JCDA, it is a significant possibility that a court could determine that the individual board members who voted to breach the MOU are personally liable for those damages.

Thank you for your consideration of this summary letter.

Very truly yours,



William F. Rohrbaugh
WVSB No. 5048

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

CIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)

I. CASE STYLE:

Case No. 18-C-

Plaintiff(s)

Judge: _____

JEFFERSON COUNTY VISION, INC., a West

Virginia Non-Profit Corporation, and DONALD

SUTHERLAND, a Jefferson County Resident

vs.

Days to
Answer

Type of Service

Defendant(s)

30

Plaintiff - Private Process

JEFFERSON CO. DEV. AUTHORITY

Name

1948 Wiltshire Road, #4

Street Address

Kearneysville WV 25430

City, State, Zip Code

II. TYPE OF CASE:

- | | |
|--|---|
| <input checked="" type="checkbox"/> General Civil | <input type="checkbox"/> Adoption |
| <input type="checkbox"/> Mass Litigation [As defined in T.C.R. 26.04(a)] | <input type="checkbox"/> Administrative Agency Appeal |
| <input type="checkbox"/> Asbestos | <input type="checkbox"/> Civil Appeal from Magistrate Court |
| <input type="checkbox"/> FELA Asbestos | <input type="checkbox"/> Miscellaneous Civil Petition |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Mental Hygiene |
| <input type="checkbox"/> Habeas Corpus/Other Extraordinary Writ | <input type="checkbox"/> Guardianship |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Medical Malpractice |

III. JURY DEMAND: Yes No CASE WILL BE READY FOR TRIAL BY (Month/Year): 09 / 2019

IV. DO YOU OR ANY
OF YOUR CLIENTS
OR WITNESSES
IN THIS CASE
REQUIRE SPECIAL
ACCOMMODATIONS?

IF YES, PLEASE SPECIFY:

Yes No

- Wheelchair accessible hearing room and other facilities
 Reader or other auxiliary aid for the visually impaired
 Interpreter or other auxiliary aid for the deaf and hard of hearing
 Spokesperson or other auxiliary aid for the speech impaired
 Foreign language interpreter-specify language: _____
 Other: _____

Attorney Name: Christopher P. Stroeck, Esq., WVSB #9387

Representing:

Firm: Arnold & Bailey, PLLC

Plaintiff Defendant

Address: 208 North George Street, Charles Town WV 25414

Cross-Defendant Cross-Complainant

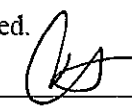
Telephone: (304) 725-2002

3rd-Party Plaintiff 3rd-Party Defendant

Proceeding Without an Attorney

Original and _____ copies of complaint enclosed/attached.

Dated: 9 / 17 / 18

Signature: 

SUMMONS

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

**JEFFERSON COUNTY VISION, INC.,
A West Virginia Non-Profit Corporation, and
DONALD SUTHERLAND, a Jefferson
County Resident**

Plaintiffs,

v.

Civil Action No. 18-C-_____

**THE JEFFERSON COUNTY DEVELOPMENT
AUTHORITY, a Public Corporation of the
State of West Virginia,**

Defendant

To the above-named Defendant:

**THE JEFFERSON COUNTY DEVELOPMENT
AUTHORITY
c/o Eric Lewis
1948 Wiltshire Road, #4
Kearneysville WV 25430**

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon Christopher P. Stroeck, Esquire, Plaintiff's attorney whose address is 208 North George Street, Charles Town WV 25414, an Answer including any related counterclaim you may have to the Complaint filed against you in the above-styled action, a true copy of which is herewith delivered to you. You are required to serve your Answer within 30 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated:

Clerk of Court

By

Deputy