CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

Closing Date: September 28, 2004

TRANSCRIPT OF PROCEEDINGS

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State of West Virginia

Certificate

I, Joe Manchin, III, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 16, ARTICLE 13, OF THE WEST VIRGINIA CODE, AND CHAPTER 16, ARTICLE 13, OF THE 2004 CUMULATIVE SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on

September 27, 2004

Secretary of State

If a majority of the votes cast at such election shall be in favor of disconnection, and if the trustees of such sanitary district shall, by ordinance, disconnect such territory, thereupon the county court of the county in which the original petition for the formation of such sanitary district was filed, shall enter an appropriate order in the records of the said county court and thereafter such territory shall henceforth be deemed disconnected from such sanitary district. (1933, Ex. Sess., c. 24, § 14.)

Editor's notes. — For construction of the county court as the county commission, see W.Va. Const. art. IX, § 9.

ARTICLE 13.

SEWAGE WORKS AND STORMWATER WORKS.

Sec.
16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.
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16-13-24. Article to be construed liberally.

Constitutionality. — See Brewer v. City of Point Pleasant, 114 W. Va. 572, 172 S.E. 717 (1934); Stevenson v. City of Bluefield, 39 F. Supp. 462 (S.D.W. Va. 1941); West Virginia Water Serv. Co. v. Cunningham, 143 W. Va. 1, 98 S.E.2d 891 (1957).

Obligations incurred by a city under the authority of this article permitting the issuance of revenue bonds for the construction of sewers are not to be deemed "debts" within the constitutional inhibition. United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

In general. — The effect of the provisions of this article is to authorize and empower a municipal corporation in this State to own, construct, equip, operate and maintain sewer systems, to place the construction, operation and management of such systems under the supervision and control of a sanitary board appointed by the governing body, to authorize such board to operate, manage and control them and to order and complete any extensions or betterments that the board may deem expedient. State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Conflict of laws. — There is no conflict between this article, authorizing a city to incur expenses which are to be payable solely from the proceeds of revenue bonds, and the general statutory limitations on the expenditure of money and incurring of obligations with respect to funds produced by tax levies. United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

Legislative intent. — It appears clear that the legislature recognized the need for municipal utility systems; however, it did not wish the municipality to become generally obligated for the building or acquisition of the system. Financing is provided for primarily by revenue bonds, and bondholders are assured of a safe investment through the collection of sufficient user charges to service the bonds and maintain the assets of the system. Op. Att'y Gen., April 3, 1979.

Limitations. — Where a city made an agreement with the federal works administrator under the War Mobilization and Reconversion Act of 1944 with regard to advances of money to the city for the purpose of plan preparation for construction of a proposed sewage treatment and disposal system, the limitation imposed by this article would be read into the agreement, since the parties are presumed to know the extent of the city's authority to make a binding contract. United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

Nonresidents. — Municipality may not compel nonresidents to connect with a municipal sewer extended without its corporate limits. 48 Op. Att'y Gen. 19 (1958).

Ordinance held valid. — An ordinance of a municipal corporation, creating a sanitary board and authorizing such sanitary board to enter into contracts for the construction of a sewage system, was within the police power of the State delegated to municipalities by this chapter. West Virginia Water Serv. Co. v. Cunningham, 143 W. Va. 1, 98 S.E.2d 891 (1957).

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§ 16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.

(a) Any municipal corporation and/or sanitary district in the state of West Virginia is hereby authorized and empowered to own, acquire, construct, equip, operate and maintain within and/or without the corporate limits of such municipal corporation:

(1) A sewage collection system and/or a sewage treatment plant or plants, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other appurtenances necessary or useful and convenient for the collection and/or treatment, purification and disposal, in a sanitary manner, of the liquid and solid waste, sewage, night soil and industrial waste of such municipal corporation and/or sanitary district, including acquisition of the municipal sewerage system resulting from the severance of a combined system pursuant to section one-b [§ 8-20-1b], article twenty, chapter eight of this code; and

(2) A stormwater collection system and control system, including all lines, pumping stations and all other facilities and appurtenances necessary or useful and convenient for the collection and control of stormwater, and an associated stormwater management program.

(b) Any municipal corporation and/or sanitary district in the state of West Virginia is hereby authorized and empowered to acquire by gift, grant, purchase, condemnation, or otherwise, all necessary lands, rights-of-way and property therefor, within and/or without the corporate limits of such municipal corporation and/or sanitary district, and to issue revenue bonds to pay the cost of such works and property.

(c) Any municipality may serve and supply the facilities of such sewerage system and a stormwater system and associated stormwater management program within the corporate limits of the municipality and within the area extending twenty miles beyond the corporate limits of such municipality: Provided, however, That the municipality may not serve or supply the facilities of such sewerage system or stormwater system within the corporate limits of any other municipality without the consent of the governing body thereof: Provided, That for stormwater systems, within the twenty miles beyond the municipality's corporate limits the only areas the municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

(d) No obligations shall be incurred by any municipality and/or sanitary district in construction or acquisition except such as is payable solely from the funds provided under the authority of this article.

(e) No municipal corporation or sanitary district may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system, which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways. (1933, Ex. Sess., c. 25, § 1; 1955, c. 132; 1986, c. 118; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, added subsection designations, substituted "the" for "such" throughout; in (a)(1), deleted "waterworks and sewerage" preceding "system", deleted "shall have authority" from the end; added (a)(2); in (b), added "Any municipality... empowered", deleted "and any such" from the end; in (c), added "Any", inserted "and a stormwater system and associated stormwater management program", substituted "may not serve" for "shall not serve", inserted "or stormwater system", added the proviso; in (d), deleted "such" preceding "municipality" and "construction"; and added (e).

Use of territory in adjoining state authorized. — By this section and § 16-13-22 the legislature intended, insofar as it could, to confer upon such municipalities as might find its exercise convenient, the right to make necessary and appropriate arrangements for the disposal of their sewage, even where that course involved the use of territory in an adjoining state. Bernard v. City of Bluefield, 117 W. Va. 556, 186 S.E. 298 (1936).

Quoted in State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Cited in City of Beckley v. Craighead, 125 W. Va. 484, 24 S.E.2d 908 (1943); Delardas v. Morgantown Water Comm'n, 148 W. Va. 776, 137 S.E.2d 426 (1964).

§ 16-13-2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.

(a) The construction, acquisition, improvement, equipment, custody, operation and maintenance of any works for the collection, treatment or disposal of sewage and, in addition, for the collection and control of stormwater and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of a sanitary board appointed by the governing body as set forth in section eighteen [§ 16-13-18] of this article.

(b) As used in this article, the following terms shall have the following meanings unless the text clearly indicates otherwise.

(1) "Board" means the sanitary board as set up in section eighteen [§ 16-13-18] of this article.

(2) "Governing body" means the mayor and council or other legally constituted governing body of any municipality.

(3) "Municipality" means any municipal corporation, incorporated city, town, village or sanitary district in the state of West Virginia.

(4) "Sewage works" means a works for the collection and/or treatment, purification and disposal of sewage, in its entirety or any integral part thereof.

(5) "Stormwater system" or "stormwater works" means a stormwater system in its entirety or any integral part thereof used to collect and dispose of stormwater and an associated stormwater management program. It includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet, including, but not limited to, any and all of the following: Inlets, conduits, corals, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, syphons, retention or detention basins, dams, floodwalls, levies, pipes, flood control systems and pumping stations, and associated stormwater management program. The term "stormwater system" and "stormwater works" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

(6) "Stormwater management program" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater works, including, but not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law: Provided, That, as used in this article, "stormwater management program" shall not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

(7) "Works" means sewage works and stormwater works either separately or collectively. (1933, Ex. Sess., c. 25, § 2; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, added subsection designations; in present (a), deleted "such" preceding "works", inserted "and, in addition, for the collection and control of stormwater", deleted "The term 'works'" from the end; and rewrote (b) to include the definitions of "sewerage works", "stormwater system" or "stormwater works", "stormwater management program", and "works".

Quoted in State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Stated in Berkeley County Pub. Serv. Sewer Dist. v. West Va. Pub. Serv. Comm'n, 204 W. Va. 279, 512 S.E.2d 201 (1998).

Cited in United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956); Delardas v. Morgantown Water Comm'n, 148 W. Va. 776, 137 S.E.2d 426 (1964).

§ 16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.

The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing of the acquisition or construction of any works, or any trust indenture as provided for, shall be approved by the governing body of the municipality before the same shall be effective.

The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do the work as the board shall direct. All compensation and all expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board of said municipality beyond the extent to which money shall have been or may be provided under the authority of this article.

No contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount the sum of ten thousand dollars, shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the board to reject any or all bids.

After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may consider expedient, if funds therefor be available or are made available as provided in this article, and shall establish rules and regulations for the use and operation of the works, and of other sewers, stormwater conduits, and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof, including, but not limited to, those activities necessary to comply with all federal and state requirements, including stormwater and surface runoff water quality improvement activities.

The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and shall be

exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for the expenses. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this article. (1933, Ex. Sess., c. 25, § 3; 1989, c. 133; 2001, cc. 143, 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, deleted "such" throughout the section; in the third undesignated paragraph, substituted "the sum of ten thousand dollars" for "the sum of five thousand dollars"; in the fourth undesignated paragraph, substituted "may consider expedient" for "may deem expedient", inserted "stormwater conduits" and added "including... improvement activities" at the end; and made other, minor changes.

Editor's notes. — Acts 2001, c. 143, effective July 10, 2001, also proposed to amend this section; however, the amendments therein have been deemed superceded by those found in Acts 2001, c. 212, which are set out above. The superceded amendment, set out below, would have substituted "the sum of ten thousand dollars" for "the sum of five thousand dollars".

Chapter 143 read:

"The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing of the acquisition or construction of any such works, or any trust indenture as hereinafter provided for, shall be approved by the governing body of such municipality before the same shall be effective. The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board shall direct. All such compensation and all expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board of said municipality beyond the extent to which money shall have been or may be provided under the authority of this article. No contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount the sum of ten thousand dollars, shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the board to reject any or all bids. After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may deem expedient, if funds therefor be available or are made available as provided in this article, and shall establish rules and regulations for the use and operation of the works, and of other sewers and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof. The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and shall be exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for such expenses. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this article."

Immunity. — A contractor under contract with the sanitary board of a municipality for construction of a sewage treatment and disposal system is not entitled to the governmental immunities of the municipality incident to the construction project. West Virginia Water Serv. Co. v. Cunningham, 143 W. Va. 1, 98 S.E.2d 891 (1957).

Third party. — Where a contract between a municipal sanitary board and a contractor, providing for the construction of a sanitary sewage system, provides inter alia that "existing surface, overhead or subsurface structures damaged or destroyed by reason of the contractor's operations shall be promptly repaired or replaced in a satisfactory manner at the cost and expense of the contractor," and the contractor by job order requests enters into a contract with an existing water company to remove certain of the latter's water pipes which interfere with the construction of the sewage system, the contractor, in a notice of motion for judgment proceeding instituted by the water company, is liable for the expense so incurred. West Vir-

ginia Water Serv. Co. v. Cunningham, 143 W. Va. 1, 98 S.E.2d 891 (1957).

Stated in State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

§ 16-13-4. Payment of preliminary expenses of surveys, etc.

All necessary preliminary expenses actually incurred by the board of any municipality in the making of surveys, estimates of costs and of revenue, employment of engineers or other employees, the giving of notices, taking of options and all other expenses of whatsoever nature, necessary to be paid prior to the issue and delivery of the revenue bonds pursuant to the provisions of this article, may be met and paid in the following manner. Said board may from time to time certify such items of expense to the clerk or recorder of said municipality, directing him to pay the several amounts thereof, and thereupon said clerk or recorder shall at once draw a warrant or warrants upon the treasurer of said municipality, which warrant or warrants shall be paid out of the general funds of said municipality not otherwise appropriated, without a special appropriation being made therefor by the governing body; or, in case there are no general funds of such municipality not otherwise appropriated, the clerk or recorder shall recommend to the governing body the temporary transfer from other funds of such municipality of a sufficient amount to meet such items of expense, or the making of a temporary loan for such purpose, and such governing body shall thereupon at once make such transfer of funds, or authorize such temporary loan in the same manner that other temporary loans are made by such municipality: Provided, however, That the fund or funds of such municipality from which such payments are made shall be fully reimbursed and repaid by said board out of the first proceeds of the sale of revenue bonds hereinafter provided for, and before any other disbursements are made therefrom, and the amount so advanced to pay such preliminary expenses, shall be a first charge against the proceeds resulting from the sale of such revenue bonds until the same has been repaid as herein provided. (1933, Ex. Sess., c. 25, § 4.)

Advances. — Money used in preliminary engineering work prior to actually beginning construction of a sewage disposal system need not be handled by the sanitary board in accordance with the provisions of §§ 16-13-1, 16-13-18 and this section. The sanitary board is an agency of the city. This article merely requires that the construction and maintenance of the project be under the supervision and control of the sanitary board. A method is provided whereby the sanitary board may meet its own necessary preliminary expenses; but the city, in the early stages of the project, during that period in which the city has not even decided to go ahead with the work, and when there is no sanitary board in existence, is not prevented by any provision in the article from obtaining advances for plan preparation by any procedure which it may see fit to adopt. United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

The United States was held entitled to recover from a city the amount of three advances of money made to the city by the federal works agency for the purpose of plan preparation for construction of a proposed sewage treatment and disposal system, and the city sanitary board was ordered to issue a requisition to the trustees, into whose hands proceeds of future bond issues came, to repay such advances out of any funds in its hands comprising proceeds of revenue bond issues. United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

Repayment. — A municipality is authorized to incur obligations for the purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from the proceeds of revenue

bonds, and not in any way from tax levies. United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

§ 16-13-5. Ordinance necessary before acquisition or construction of works.

Before any municipality shall construct or acquire any works under this article, the governing body shall upon petition of the board, enact an ordinance or ordinances which shall: (a) Set forth a brief and general description of the works and, if the same are to be constructed, a reference to the preliminary report which shall heretofore have been prepared and filed by an engineer chosen by the board as aforesaid; (b) set forth the cost thereof estimated by the engineer chosen as aforesaid; (c) order the construction or acquisition of such works; (d) direct that revenue bonds of the municipality shall be issued pursuant to this article in such an amount as may be found necessary to pay the cost of the works; and (e) contain such other provisions as may be necessary in the premises. (1933, Ex. Sess., c. 25, § 5.)

Quoted in United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956).

Stated in State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

§ 16-13-6. Publication and hearing upon ordinance.

After such ordinance shall have been adopted, an abstract of the ordinance, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be the municipality. The notice shall state that said ordinance has been adopted, and that the municipality contemplates the issuance of the bonds described in the ordinance, and that any person interested may appear before the governing body upon a certain date, which shall not be less than ten days subsequent to the first date of publication of such abstract and notice which shall not be prior to the last date of publication of such abstract and notice, and present protests. 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: Provided, however, That if at such a hearing written protest is filed by thirty percent or more of the owners of real estate situate in said municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of the said governing body assent thereto. (1933, Ex. Sess., c. 25, § 6; 1967, c. 105; 1981, 1st Ex. Sess., c. 2.)

§ 16-13-7. Acquisition by condemnation or purchase.

Every such municipality shall have power to condemn any such works to be acquired and any land, rights, easements, franchises and other property, real or personal, deemed necessary or convenient for the construction of any such works, or for extensions, improvements, or additions thereto, and in connection

therewith may have and exercise all the rights, powers and privileges of eminent domain granted to municipal corporations under the laws relating thereto. Title to property condemned shall be taken in the name of the municipality. Proceedings for such appropriation of property shall be under and pursuant to the provisions of chapter fifty-four [§§ 54-1-1 et seq.], of the Code of West Virginia, one thousand nine hundred thirty-one, and acts amendatory and supplemental thereto: Provided, That the municipality shall be under no obligation to accept and pay for any property condemned, and shall in no event pay for any property condemned or purchased, except from the funds provided pursuant to this article; and in any proceedings to condemn, such orders may be made as may be just to the municipality and to the owners of the property to be condemned, and an undertaking or other security may be required securing such owners against any loss or damage to be sustained by reason of the failure of the municipality to accept and pay for the property, but such undertaking or security shall impose no liability upon the municipality except such as may be paid from the funds provided under the authority of this article. In event of the acquisition by purchase the board may obtain and exercise an option from the owner or owners of said property for the purchase thereof, or may enter into a contract for the purchase thereof, and such purchase may be made upon such terms and conditions, and in such manner as the board may deem proper. In event of the acquisition of any works already constructed by purchase or condemnation, the board at or before the time of the adoption of the ordinance described in section five [§ 16-13-5] hereof, shall cause to be determined what repairs, replacements, additions, and betterments will be necessary in order that such works may be effective for their purpose, and an estimate of the cost of such improvements shall be included in the estimate of the cost required by section five hereof, and such improvement shall be made upon the acquisition of the works and as a part of the cost thereof. (1933, Ex. Sess., c. 25, § 7.)

§ 16-13-8. Cost of works.

The cost of the works shall be deemed to include the cost of acquisition or construction thereof, the cost of all property, rights, easements, and franchises deemed necessary or convenient therefor and for the improvements determined upon as provided in this article; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvement last mentioned; engineering and legal expenses; expense for estimates of cost and of revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized and the construction or acquisition of the works and the placing of the works in operation and the performance of the things herein required or permitted in connection with any thereof. (1933, Ex. Sess., c. 25, § 8.)

Advances. — Advances from the United States to a city for the purpose of plan preparation for construction of a proposed sewage treatment and disposal system represent a part of the cost of the works which should have been repaid out of the first proceeds received from the sale of the first issue of revenue bonds. Such repayment would not in any way increase the cost of the works; it was the very first item of expense incurred in connection with the works. Under the agreement between the city and the United States, it was a liability from the moment construction of the sewage treatment and disposal plant was begun. No disadvantage would result to bondholders as a result of the payment of this just debt out of the proceeds of a future revenue bond issue. United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

Preliminary expenses. — It is foreseen, as shown in this section, that a city may probably incur expenses in "determining the feasibility or practicability of the enterprise." Such determination would of course be made prior to the issuance of any revenue bonds, and probably before the creation of a sanitary board. It might often result in a rejection of the project altogether, in which event no revenue bonds would be issued, and any obligation incurred by the city might prove to be uncollectible. On the other hand, if the project be undertaken by the city, whatever loans may have been made on the faith of the revenue bonds would or should be included in the cost of the works and repaid out of the proceeds of the bonds. United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

§ 16-13-9. Contracts and obligations incurred to be paid for solely by revenue bonds.

Nothing in this article contained shall be so construed as to authorize or permit any municipality to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely from the funds provided under this article. Funds for the payment of the entire cost of any of the works referred to in this article, exclusive of any portions of the cost that may be defrayed out of any grant or contribution, shall be provided by the issuance of revenue bonds of the municipality, the principal and interest of which shall be payable solely from the fund herein provided for the payment, and the bonds may not, in any respect, be a corporate indebtedness of the municipality, within the meaning of any statutory or constitutional limitations thereon. All the details of the bonds shall be determined by ordinance or ordinances of the municipality. (1933, Ex. Sess., c. 25, § 9; 1949, c. 93; 2001, c. 212.)

Cross references. — See notes to § 16-13-8.

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, substituted "the" for "such" throughout, substituted "any of the works referred to in this article" for "the works", and substituted "the bonds may not" for "the bonds shall not".

Applicability. — The provisions of this article become a part of the contract between the municipality and the bondholders as effectually as if written verbatim in the bonds. The bondholders are bound by their contract in this instance just as firmly as in any other legal contract. Consequently, the bonds do not create a corporate indebtedness of the municipality. Brewer v. City of Point Pleasant, 114 W. Va. 572, 172 S.E. 717 (1934); United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956), commented on in 60 W. Va. L. Rev. 105 (1957).

Contracts between municipalities. — Under the provisions of §§ 16-13-19 and 16-13-23a, a city and a town could enter into a contract whereby the city agreed to construct a sewage disposal facility and the town agreed to contribute to the cost of the construction of the facility in return for the right to use the facility, and the fact that the town was unable to sell revenue bonds because it was not allowed to have part ownership in the treatment plant or interceptor sewers did not relieve the town of its contractual obligation when the city offered to buy the revenue bonds issued by the town. Since the contracts were authorized by statute and were thus not ultra vires, even if the contracts were not formally approved by ordinance, the municipalities were estopped from asserting any invalidity of the contracts on such ground. City of Morgantown v. Town of Star City, 156 W. Va. 529, 195 S.E.2d 166 (1973).

§ 16-13-10. Interest on and redemption of bonds; form; statement on face of bond; negotiability; exemption from taxation; registration; execution; sale; disposition of surplus proceeds; additional and temporary bonds.

Such revenue bonds shall bear interest at not more than twelve percent per annum, payable at such times, and shall mature at such time or times as may be determined by ordinance. Such bonds may be made redeemable before maturity at the option of the municipality, to be exercised by said board, at not more than the par value thereof and a premium of five percent, under such terms and conditions as may be fixed by the ordinance authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. Said ordinance shall determine the form of the bonds, either coupon or registered, shall set forth any registration and conversion privileges, and shall fix the denomination or denominations of such bonds and the place or places of payment of the principal and interest thereof, which may be at any bank or trust company within or without the State. The bonds shall contain a statement on their face that the municipality shall not be obligated to pay the same or the interest thereon except from the special fund provided from the net revenues of the works. All such bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State. Said bonds shall be exempt from all taxation, state, county and municipal. Such bonds shall be executed by the proper legally constituted authorities of the municipality, and be sealed with the corporate seal of the municipality, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers, before delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. Such bonds shall be sold at a price not lower than a price, which when computed upon standard tables of bond values, will show a net return of not more than thirteen per centum per annum to the purchaser upon the amount paid therefor, and the proceeds derived therefrom shall be used exclusively for the purposes for which said bonds are issued and same may be sold at one time or in parcels as funds are needed. Any surplus of bond proceeds over and above the cost of the works shall be paid into the sinking fund hereinafter provided. If the proceeds of the bonds, by error of calculation or otherwise, shall be less than the cost of the works, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in said ordinance authorizing the issuance of the bonds first issued or in the trust indenture hereinafter authorized, shall be deemed to be of the same issue and shall be entitled to payment without preference or priority of the bonds first issued. Prior to the preparation of the definitive bonds, temporary bonds may under like restrictions be issued with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. (1933, Ex. Sess., c. 25, § 10; 1970, c. 11; 1980, c. 33; 1981, 1st Ex. Sess., c. 2.)

§ 16-13-11. Additional bonds to extend or improve works.

The governing body may provide by said ordinance authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued, at one time or from time to time under such limitations and restrictions as may be set forth in said ordinance and/or trust indenture, for the purpose of extending, improving or bettering the works when deemed necessary in the public interest, such additional bonds to be secured and be payable from the revenues of the works equally with all other bonds issued pursuant to said ordinance without preference or distinction between any one bond and any other definite bonds upon the issuance of the latter. (1933, Ex. Sess., c. 25, § 11.)

§ 16-13-12. Additional bonds for extension, etc., of works to have equal priority with original bonds.

The governing body may provide by said ordinance authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued, at one time or from time to time, under such limitations and restrictions as may be set forth in said ordinance and/or trust indenture, for the purpose of extending, improving or bettering the works when deemed necessary in the public interest, such additional bonds to be secured and be payable from the revenues of the works equally with all other bonds issued pursuant to said ordinance without preference or distinction between any one bond and any other bond by reason of priority of issuance or otherwise. (1933, Ex. Sess., c. 25, § 12.)

§ 16-13-13. Application of revenue from bonds; lien.

All moneys received from any bonds issued pursuant to this article, after reimbursements and repayment to said municipality of all amounts advanced for preliminary expenses as provided in section four [§ 16-13-4] of this article, shall be applied solely to the payment of the cost of the work, extensions, improvements or betterments, or to the appurtenant sinking fund and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for. (1933, Ex. Sess., c. 25, § 13.)

Quoted in United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956).

§ 16-13-14. Securing bonds by trust indenture.

In the discretion of the governing body such bonds may be secured by a trust indenture by and between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the State of West Virginia but no such trust indenture shall convey or mortgage the works or any part thereof. The ordinance authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may

contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality and the board in relation to the construction or acquisition of the works and the improvement, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that the works shall be contracted for, constructed and paid for under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, successors, assigns or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the works or other moneys pertaining thereto be satisfactory to such purchasers, successors, assigns or nominees. Such indenture may set forth the rights and remedies of the bondholders and/or such trustee, restricting the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. Except as in this article otherwise provided, the governing body may provide by ordinance or in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues of the works to such officer, board or depository as it may determine for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may det (1933, Ex. Sess., c. 25, § 14.)

§ 16-13-15. Sinking fund; transfer of balance of net revenues.

At or before the issuance of any such bonds the governing body shall by said ordinance create a sinking fund, to be remitted to and administered by the West Virginia municipal bond commission, for the payment of the bonds and the interest thereon and the payment of the charges of banks or trust companies for making payment of such bonds or interest, and shall set aside and pledge a sufficient amount of the net revenues of the works, hereby defined to mean the revenues of the works remaining after the payment of the reasonable expense of operation, repair and maintenance, such amount to be paid by the board into said sinking fund at intervals to be determined by ordinance prior to issuance of the bonds, for: (a) The interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or, if all bonds mature at one time, the proper maintenance of a sinking fund in such amounts as are necessary and sufficient for the payment thereof at such time; (d) a margin for safety and for the payment of premiums upon bonds retired by call or purchase as herein provided, which margin, together with any unused surplus of such margin carried forward from the preceding year, shall equal ten percent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenue of the works. Prior to the issuance of the bonds the board may by ordinance be given the right to use or direct the West Virginia municipal bond commission to use such sinking fund or any part thereof in the purchase of any of the

outstanding bonds payable therefrom at the market price thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled and shall not again be issued. After the payments into such fund as herein required, the board may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by the board sufficient for operation, repair and maintenance for an ensuing period of not less than twelve months and for depreciation, into the sinking fund or into a fund for extensions, betterments and additions to the works. The amounts of the balance of the net revenue as and when so set apart shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and with the ordinance pursuant to which such bonds have been issued. The West Virginia municipal bond commission is hereby authorized to act as fiscal agent for the administration of such sinking fund, under any ordinance passed pursuant to the provisions of this article, and shall invest all such sinking funds as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the governing body directly thereto. (1933, Ex. Sess., c. 25, § 15; 1933, 2nd Ex. Sess., c. 48; 1986, c. 118.)

§ 16-13-16. Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.

The governing body shall have power, and it shall be its duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use of and the service rendered by:

(a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality, or that in any way uses or is served by such works; and

(b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate, or building that in any way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

The governing body may change and readjust such rates, fees or charges from time to time. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

Such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be considered the revenues of the works.

No such rates, fees or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or

to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates, fees or charges.

After introduction of the ordinance fixing such rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates, fees or charges, shall be given by publication as a Class II-O legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. The first publication shall be made at least ten days before the date fixed in such notice for the hearing.

After such hearing, which may be adjourned from time to time, the ordinance establishing rates, fees or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of such rates, fees and charges so established shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

Any change or readjustment of such rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as hereinbefore provided: Provided, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates, fees or charges shall always be sufficient for such expense of operation, repair and maintenance and for such sinking fund payments.

All rates, fees or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate, fees or charge so established is not paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the municipality, and in connection with such action said lien may be foreclosed against such lot, parcel of land or building, in accordance with the laws relating thereto: Provided, That where both water and sewer services are furnished by any municipality to any premises the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof.

Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of thirty 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 rates, fees and charges are fully paid.

The board collecting such rates, fees or charges shall be obligated under reasonable rules and regulations, to shut off and discontinue both water and sewer services to all delinquent users of either water facilities, or sewer facilities, or both, and shall not restore either water facilities or sewer facilities, to any delinquent user of either until all delinquent rates, fees or charges for both water facilities, and sewer facilities, including reasonable

interest and penalty charges, have been paid in full. (1933, Ex. Sess., c. 25, § 16; 1933, 2nd Ex. Sess., c. 48; 1959, c. 125; 1967, c. 105; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, inserted "fees" preceding "charges" throughout; in the first paragraph, deleted "such" from the end; inserted (b); in the second paragraph of (b), added "The governing body" and the last sentence; in the third paragraph of (b), substituted "shall be considered" for "shall be deemed"; in the seventh paragraph of (b), deleted "however" following "Provided"; and made other, minor changes.

Rules of Civil Procedure. — As to abolition of procedural distinctions between law and equity, see R.C.P. 2.

Applicability. — Although the public service commission concluded that cities providing only sewer service are not covered by this section, which applies to municipalities that provide both water and sewer service, the district court implicitly rejected the commission's interpretation. City of Charleston v. Public Serv. Comm'n, 57 F.3d 385 (4th Cir. 1995), cert. denied, 516 U.S. 974, 116 S. Ct. 474, 133 L. Ed. 2d 404 (1995).

Discrimination not shown. — Charges made against the users of a city sewage system were based upon the amount of water used upon the premises as indicating the extent to which the sewers were used. The charges were subject to a deduction of the amount of water retained on the premises, such amount to be determined by a meter installed by the consumer and used to record gallonage of water that had come on the property but had not been disposed of through the sewers. It was held that the method under which the charges were assessed was neither capricious nor unfair although certain users had been unable to install meters used to measure their deductions. Houchins v. City of Beckley, 127 W. Va. 306, 32 S.E.2d 286 (1944).

Jurisdiction. — The fact that this section speaks of the enforcement of the lien in a "civil action" should not be construed as placing that jurisdiction in our courts of law simply because the word "action," strictly applied, does not usually refer to chancery practice. City of Beckley v. Craighead, 125 W. Va. 484, 24 S.E.2d 908 (1943).

Municipal sewer system is subject to jurisdiction of public service commission, so municipality is required to file its rates with the commission for approval in accordance with §§ 24-2-1 et seq. 45 Op. Att'y Gen. 642 (1954).

Applied in Brewer v. City of Point Pleasant, 114 W. Va. 572, 172 S.E. 717 (1934).

Quoted in State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Cited in Delardas v. Morgantown Water Comm'n, 148 W. Va. 776, 137 S.E.2d 426 (1964).

§ 16-13-17. Government units subject to established rates.

The municipality and any county government, state government and federal government served by the services of the works shall be subject to the same fees, charges and rates established as provided in this article, or to fees, charges and rates established in harmony therewith, for service rendered the municipality, county, state or federal government and shall pay such rates, fees or charges when due from corporate funds and the same shall be considered to be a part of the revenues of the works as herein defined, and be applied as herein provided for the application of the revenues. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways. (1933, Ex. Sess., c. 25, § 17; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, substituted "Government units" for "Municipality" in the section heading; inserted "fees" preceding "charges" throughout; inserted "and any county... works", substituted "as provided in this article" for "as hereinbefore provided", inserted "county, state or federal government", substituted "shall be considered" for "shall be deemed", substituted "the revenues" for "such revenues"; and added the last sentence.

Quoted in West Virginia Water Serv. Co. v. Cunningham, 143 W. Va. 1, 98 S.E.2d 891 (1957).

§ 16-13-18. Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members.

The governing body shall provide by ordinance the organization of the board, and that the custody, administration, operation and maintenance of such works shall be under the supervision and control of a sanitary board, created as herein provided.

Such sanitary board shall be composed of either the mayor of the municipality, or the city manager thereof, if said municipality shall have a city manager form of government, and two persons appointed by the governing body: Provided, That, in the event of an acquisition or merger of an existing works, the governing body may increase the membership to a maximum of four members in addition to the mayor or city manager of the municipality served by the board.

During the construction period, one of the members must be a registered professional engineer. The engineer member of the board need not be a resident of said municipality. After the construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer. No officer or employee of the municipality, whether holding a paid or unpaid office, shall be eligible to appointment on said sanitary board until at least one year after the expiration of the term of his or her public office. The appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each term and each succeeding term, an appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. Each member shall give such bond, if any, as may be required by ordinance. The mayor or city manager shall act as chairman of the sanitary board, which shall elect a vice chairman from its members and shall designate a secretary and treasurer (but the secretary and the treasurer may be one and the same), who need not be a member or members of the sanitary board. The vice chairman, secretary and treasurer shall hold office as such at the will of the sanitary board.

The members of the sanitary board shall receive compensation for their services, either as a salary or as payments for meetings attended, as the governing body may determine, and shall be entitled to payment for their reasonable expenses incurred in the performance of their duties. The governing body shall fix the reasonable compensation of the secretary and treasurer in its discretion, and shall fix the amounts of bond to be given by the treasurer. All compensation, together with the expenses in this section referred to, shall be paid solely from funds provided under the authority of this article. The sanitary board shall have power to establish bylaws, rules and regulations for its own government. (1933, Ex. Sess., c. 25, § 18; 1939, c. 96; 1953, c. 146; 1957, c. 137; 1992, c. 95; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, made the section gender neutral; in the second paragraph, deleted "sewage" preceding "works", in the third paragraph, substituted "The appointees" for "Said appointees", deleted "such" pre-

ceding "term", substituted "The mayor" for "Such mayor"; and in the last paragraph, deleted "such" preceding "compensation".

In general. — The effect of the provisions of this article is to authorize and empower a municipal corporation in this State to own, construct, equip, operate and maintain sewer systems, to place the construction, operation and management of such systems under the supervision and control of a sanitary board appointed by the governing body, to authorize such board to operate, manage and control them and to order and complete any extensions or betterments that the board may deem expedient. State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Construction. — There is no repugnancy between the provisions of this article and §§ 24-1-1, 24-2-1 or 24-3-1, and for these reasons, the provisions of this article do not operate to repeal any of those sections. State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Adjoining state. — Since the incorporation of its sanitary board and its domestication in the state of Virginia was the only plan by which the power intended to be granted by the legislature to a city to construct a sewage disposal plant outside the State of West Virginia could be legally effectuated, the power to so incorporate its sanitary board was a necessary and incidental right to the main power granted. Bernard v. City of Bluefield, 117 W. Va. 556, 186 S.E. 298 (1936).

Board membership. — When a municipal corporation has a city manager form of government, the municipality's governing board has the option of appointing either its mayor or its city manager (but not both) to the municipal sanitary board. 52 Op. Att'y Gen. 217 (1967).

City treasurer. — As to scope of duties and responsibilities of city treasurer as they relate to possession of funds of a sanitary board, see 52 Op. Att'y Gen. 497 (1967).

Consulting engineer. — Member of city council may not serve as consulting engineer to the sanitary board on city sewer project. 49 Op. Att'y Gen. 60 (1961).

Extension of service. — A public utility is under a duty to make reasonable extensions of its services in accordance with its franchise and charter obligations and the needs of the inhabitants within the territory covered by its franchise; and a public service commission may, where its action is not unlawful, arbitrary, or capricious, order an extension of service for the inhabitants of such territory. State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Legislative intent. — The provisions of this article do not revise the subject matter of §§ 24-1-1, 24-2-1 or 24-3-1, and they were not intended as a substitute for any of the provisions of those sections. State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

In conferring such power and authority upon a municipality by this article, the legislature did not create, or intend to create, any repugnancy or inconsistency between the provisions of this article and the pertinent provisions of chapter 24, or to repeal any of those provisions of that chapter. State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Applied in Houchins v. City of Beckley, 127 W. Va. 306, 32 S.E.2d 286 (1944).

Cited in United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956).

§ 16-13-18a. Publication of financial statement.

Every sanitary board shall prepare a financial statement and cause the same to be published as a Class I legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be the sanitary district. Such statement shall contain an itemized account of the receipts and expenditures of the board during the previous fiscal year, showing the source from which all money was derived, and the name of the person to whom an order was issued, together with the amount of such order, and why such order was issued, arranging the same under distinct heads, and including all money received and expended from the sale of bonds, and also a specific statement of the debts of such board, showing the purpose for which any debt was contracted, the amount of money in all funds at the end of the preceding year, and the amount of uncollected service charges. Such statement shall be prepared and published by the board as soon as practicable after the close of the fiscal year: Provided, That such statement for the fiscal year ending June

thirtieth, one thousand nine hundred fifty-six, may be published any time during the year one thousand nine hundred fifty-seven. The statement shall be sworn to by the chairman and secretary and treasurer of the board. If a board fails or refuses to perform the duties hereinbefore named, every member of the board concurring in such failure or refusal shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars and the circuit court or criminal court and justices of the peace, of the county where the offense was committed, shall have concurrent jurisdiction to try such offense. (1957, c. 138; 1967, c. 105.)

Editor's notes. — For construction of the justice of the peace as magistrate, see § 50-1-17 and W.Va. Const., art. VIII, § 15.

§ 16-13-19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers.

Any municipality operating a sewage collecting system and/or a sewage disposal plant or plants or stormwater works as defined in this article, or which as herein provided has ordered the construction or acquisition of such works (in this section called the owner), is hereby authorized to contract with one or more other municipal corporations or political subdivisions within the state (in this section called the lessee), and such lessees are hereby authorized to enter into contracts with the owners, for the service of such works to such lessees and their inhabitants, but only to the extent of the capacity of the works without impairing the usefulness thereof to the owners, upon such terms and conditions as may be fixed by the boards and approved by ordinances of the respective contracting parties: Provided, That no contract shall be made for a period of more than forty years or in violation of the provisions of said ordinance authorizing bonds hereunder or in violation of the provisions of said trust indenture.

The lessee shall by ordinance have power to establish, change and adjust rates, fees and charges for the service rendered therein by the works against the owners of the premises served, in the manner hereinbefore provided for establishing, changing and adjusting rates, fees and charges for the service rendered in the municipality where the works are owned and operated, and such rates, fees or charges shall be collectible and shall be a lien as herein provided for rates, fees and charges made by the owner.

The necessary intercepting sewers and appurtenant works for connecting the works of the owner with the sewerage system of the lessee shall be constructed by the owner and/or the lessee upon such terms and conditions as may be set forth in said contract, and the cost or that part of the cost thereof which is to be borne by the owner may be paid as a part of the cost of the works from the proceeds of bonds issued under this article unless otherwise provided by said ordinance or trust indenture prior to the issuance of the bonds. The income received by the owner under any contract shall, if so provided in said ordinance or trust indenture, be considered to be a part of the revenues of the

works as in this article defined and be applied as herein provided for the application of the revenues. (1933, Ex. Sess., c. 25, § 19; 1981, 1st Ex. Sess., c. 2; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, substituted "the" for "such" throughout, inserted "fees" following "rates" throughout; in the first paragraph, inserted "or stormwater works", substituted "state" for "State", deleted "such" preceding "contracts", deleted "such" following "Provided", deleted "such" preceding "contract" in the proviso; in the last paragraph, deleted "such" preceding "contract", and substituted "considered" for "deemed" in the last sentence.

Applied in City of Morgantown v. Town of Star City, 156 W. Va. 529, 195 S.E.2d 166 (1973).

§ 16-13-20. Discharge of lien on property acquired.

No property shall be acquired under this article upon which any lien or other encumbrance exists, unless at the time such property is acquired a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance in full. (1933, Ex. Sess., c. 25, § 20.)

§ 16-13-21. Action on certificates or attached coupons; receivers.

Any holder of any such certificates or any of the coupons attached thereto, and the trustee, if any, except to the extent the rights herein given may be restricted by said ordinance authorizing issuance of the bonds or by the trust indenture, may either at law or in equity, by suit, action, mandamus or other proceeding protect and enforce any and all rights granted hereunder or under such ordinance or trust indenture, and may enforce and compel performance of all duties required by this article or by such ordinance or trust indenture to be performed by the municipality issuing the bonds or by the board or any officer, including the making and collecting of reasonable and sufficient charges and rates for service rendered by the works. If there be any failure to pay the principal or interest of any of the bonds on the date therein named for such payment, any court having jurisdiction of the action may appoint a receiver to administer the works on behalf of the municipality and the bondholders and/or trustee, except as so restricted, with power to charge and collect rates sufficient to provide for the payment of the expenses of operation, repair and maintenance and also to pay any bonds and interest outstanding and to apply the revenues in conformity with this article and the said ordinance and/or trust indenture. (1933, Ex. Sess., c. 25, § 21.)

Rules of Civil Procedure. — As to abolition of procedural distinctions between law and equity, see Rule 2.

As to receivers, see Rule 66.

As to application of rules to extraordinary remedies, see Rule 81(a)(5).

§ 16-13-22. Powers conferred in addition to existing powers; jurisdiction outside corporate limits.

The authority herein given shall be in addition to and not in derogation of any power existing in any municipality under any statutory or charter

provisions which it may now have or hereafter adopt. For all purposes of this article, all municipal corporations shall have jurisdiction for twenty miles outside the corporate limits thereof: Provided, That for stormwater systems, within the twenty miles beyond the municipality's corporate limits the only areas the municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

The jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways. (1933, Ex. Sess., c. 25, § 22; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, in the first paragraph, substituted "twenty miles outside" for "ten miles outside", added the proviso; and added the last paragraph.

§ 16-13-22a. Grants, loans and advances.

Any municipality is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition or construction of said sewage works and the construction of betterments and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said sewage works or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section. (1949, c. 93; 1961, c. 107; 1980, c. 59; 1981, 1st Ex. Sess., c. 2; 1986, c. 118.)

Stated in United States v. City of Charleston, 149 F. Supp. 866 (S.D.W. Va. 1956).

§ 16-13-22b. Contracts for abatement of pollution.

When determined by its legislative body to be in the public interest and necessary for the protection of the public health, any municipality is authorized to enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the municipality of amounts at least sufficient, in the determination of such legislative body, to compensate the municipality for the cost of providing (including payment of principal and interest charges, if any), and of operating and maintaining the sewerage facilities serving such industrial establishment. (1949, c. 93.)

§ 16-13-22c. Refunding bonds.

Any municipality is authorized to issue refunding revenue bonds to refund, pay or discharge all or any part of its outstanding revenue bonds, including interest thereon, if any, in arrears or about to become due. The relevant provisions in this article pertaining to revenue bonds shall be equally applicable in the authorization and issuance of refunding revenue bonds, including their terms and security, the ordinance, the trust indenture, rates, or other aspects of the bonds. (1949, c. 93.)

§ 16-13-22d. Subordination of bonds.

Notwithstanding any other provisions to the contrary in this article, any municipality authorizing the issuance of bonds under this article in an effort to aid in the abatement or reduction of the pollution of any waters or streams may provide in the ordinance authorizing the issuance of the bonds and in any trust indenture pertaining thereto that such bonds, or any additional bonds that may thereafter be issued to extend or improve the works, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to the payment of principal and interest and the security thereof, to such other bonds as are designated in the ordinance. (1949, c. 93.)

§ 16-13-22e. Operating contract.

Any such municipality may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the facilities and properties of said sewerage system, or any part thereof, for such period of time and under such terms and conditions as shall be agreed upon between such municipality and such persons, firms or corporations. Such municipality shall have power to provide in the resolution authorizing the issuance of bonds hereunder, or in any trust indenture, securing such bonds, that such contracts or agreements shall be valid and binding upon the municipality as long as any of said bonds, or interest thereon, are outstanding and unpaid. (1955, c. 132.)

§ 16-13-22f. Exemption of bonds from taxation.

Said bonds and the interest thereon, together with all properties and facilities of said municipality owned or used in connection with the works, and all the moneys, revenues and other income of such municipality derived from such works shall be exempt from all taxation by the state of West Virginia or any county, municipality, political subdivision or agency thereof. (1955, c. 132; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, substituted "works" for "sewerage system" twice, and substituted "state" for "State".

§ 16-13-22g. Covenants with bondholders.

Any resolution authorizing the issuance of bonds hereunder, or any trust indenture with any bank or trust company within or without the state, for the security of the bonds, may contain covenants with the holders of such bonds as to:

(a) The purpose or purposes to which the proceeds of sale of such bonds, or the revenues derived from the sewerage system or stormwater system, may be applied and the securing, use and disposition thereof, including, if considered desirable, the appointment of a trustee or depositary for any of such funds;

(b) The pledging of all or any part of the revenues derived from the ownership, operation or control of such sewerage systems or stormwater system, including any part thereof heretofore or hereafter constructed or acquired or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for such reserve or other funds as may be considered necessary or desirable;

(c) The fixing, establishing and collecting of such fees, rentals or other charges for the use of the services and facilities of such sewerage system or stormwater system, including the parts thereof heretofore or hereafter constructed or acquired and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of operation, maintenance and repair of such sewerage system or stormwater system, the payment of the principal of and interest on all bonds or other obligations payable from the revenues of such sewerage system or stormwater system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of such bonds;

(d) The transfer from the general funds of the municipality to the account or accounts of such sewerage system or stormwater system of an amount equal to the cost of furnishing the municipality or any of its departments, boards or agencies with the services and facilities of such sewerage system or stormwater system;

(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenue of such sewerage system or stormwater system, and the rank or priority, as to lien and source and security for payment from the revenues of the sewerage system or stormwater system, between bonds payable from the revenues;

(f) The manner and terms upon which all bonds and other obligations issued hereunder may be declared immediately due and payable upon the happening of a default in the payment of the principal of or interest thereon, or in the performance of any covenant or agreement with bondholders, and the manner and terms upon which defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed;

(g) Budgets for the annual operation, maintenance and repair of such sewerage system or stormwater system and restrictions and limitations upon expenditures for such purposes, and the manner of adoption, modification, repeal or amendment thereof, including the approval of such budgets by consulting engineers designated by holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon such sewerage system or stormwater system, or any part thereof, and the use and disposition of the proceeds of any insurance;

(i) The keeping of books of account, relating to such undertakings and the audit and inspection thereof, and the furnishing to the holders of bonds issued hereunder or their representatives, reports prepared, certified, or approved by accountants designated or approved by the holders of bonds issued hereunder;

(j) Such other additional covenants as shall be considered necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that other covenants are not expressly enumerated hereunder, it being the intention hereof to grant to the municipalities the power to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant such municipalities full and complete power to enter into any contracts, covenants or agreements with holder of bonds issued hereunder not inconsistent with the constitution of the state of West Virginia. (1955, c. 132; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, substituted "the" for "such" throughout, inserted "or stormwater system" following "sewerage system" throughout, substituted "considered" for "deemed" throughout; in the first paragraph, substituted "the bonds" for "said bonds"; in (f), deleted "such" preceding "defaults"; in (j), deleted "such" preceding "other covenants", and made other, minor changes.

§ 16-13-23. Article deemed full authority for construction, etc., of works and issue of bonds; alternative method; powers of state department of health unaffected.

This article, shall, without reference to any other statute, be deemed full authority for the construction, acquisition, improvement, equipment, maintenance, operation and repair of the works herein provided for and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition or election or other or further proceeding in respect to the construction or acquisition of the works or to the issuance or sale

of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to such construction or acquisition or to the issuance or sale of such bonds shall be required except such as are prescribed by this article, any provisions of other statutes of the State to the contrary notwithstanding: Provided, however, That all functions, powers and duties of the state department of health shall remain unaffected by this article. (1933, Ex. Sess., c. 25, § 23.)

Quoted in State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

§ 16-13-23a. Additional powers of municipality upon receipt of order to cease pollution.

Notwithstanding any other provision contained in this article, and in addition thereto, the governing body of any municipal corporation which has received or which hereafter receives an order issued by the director of the division of environmental protection or the environmental quality board requiring such municipal corporation to cease the pollution of any stream or waters, is hereby authorized and empowered to fix, establish and maintain, by ordinance, just and equitable rates, fees or charges for the use of the services and facilities of the existing sewer system and/or stormwater system of such municipal corporation, and/or for the use of the services and facilities to be rendered upon completion of any works and system necessary by virtue of said order, to be paid by the owner, tenant or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system or stormwater system, or that in any way uses or is served thereby, and may change and readjust such rates, fees or charges from time to time.

Such rates, fees or charges shall be sufficient for the payment of all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection and/or treatment, purification and disposal of sewage or stormwater, and the repair, alteration and extension of existing sewer facilities or stormwater facilities, as may be necessary to comply with such order of the director of the division of environmental protection or the environmental quality board, and for the operation, maintenance and repair of the entire works and system.

The governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the proceeds derived from rates or charges until completion of the construction, to be remitted to and administered by the municipal bond commission by expending and paying the costs and expenses of construction and operation in the manner as provided by said ordinance.

After the completion of the construction such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable costs and expenses of operation, maintenance, repair, replacement and extension from time to time, of the entire sewer and works or entire stormwater works.

No such rates, fees or charges shall be established until after a public hearing, at which all the potential users of the works and owners of property served or to be served thereby and others shall have had an opportunity to be heard concerning the proposed rates or charges.

After introduction of the ordinance fixing rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of rates, fees or charges, shall be given by publication of notice as a Class II-O legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication is the municipality. The first publication shall be made at least ten days before the date fixed therein for the hearing.

After such hearing, which may be adjourned from time to time, the ordinance establishing the rates, fees or charges, either as originally introduced or as modified and amended, may be passed and put into effect. A copy of the schedule of the rates, fees and charges so established shall be kept on file in the office of the sanitary board having charge of the construction and operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

Any change or readjustment of rates, fees or charges may be made in the same manner as rates, fees or charges were originally established as hereinbefore provided: Provided, however, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice is required.

If any rate, fees or charge so established is not paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the sanitary board of such municipal corporation in a civil action in the name of the municipality.

Any municipal corporation exercising the powers given herein has authority to construct, acquire, improve, equip, operate, repair and maintain any plants, machinery, or works necessary to comply with the order of the director of the division of environmental protection or the environmental quality board, and the authority provided herein to establish, maintain and collect rates, fees or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as the article provides for or requires the issuance of revenue bonds or the imposition of rates, fees and charges in connection with the bonds: Provided, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the director of the division of environmental protection or the environmental quality board, and the rights, powers, and duties of the municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article: Provided, That the

jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways and no rates, fees or charges for stormwater services or costs of compliance may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways. (1955, c. 135; 1967, c. 105; 1994, c. 61; 2001, c. 212.)

Effect of amendment of 2001. — Acts 2001, c. 212, effective July 13, 2001, substituted "the" for "such" throughout, substituted "the" for "said" throughout, inserted "fees" following "rates" throughout; in the first paragraph, inserted "and/or stormwater system" following "existing sewer system", inserted "or stormwater system" following "such sewer system"; in the second paragraph, inserted "or stormwater" following "sewage", inserted "or stormwater facilities" following "sewer facilities"; in the fourth paragraph, added "or entire stormwater works" to the end; in the sixth paragraph, deleted "such" following "fixing" and "publication of"; in the eighth paragraph, deleted "such" preceding "rates" twice; and in the last paragraph, added the proviso.

Applied in City of Morgantown v. Town of Star City, 156 W. Va. 529, 195 S.E.2d 166 (1973).

§ 16-13-24. Article to be construed liberally.

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose thereof. (1933, Ex. Sess., c. 25, § 24.)

Quoted in West Virginia Water Serv. Co. v. Cunningham, 143 W. Va. 1, 98 S.E.2d 891 (1957).

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

Sec.
16-13A-1. Legislative findings.
16-13A-1a. Jurisdiction of the public service commission.
16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.
16-13A-1c. General purpose of districts.
16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.
16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.
16-13A-3a. Removal of members of public service board.
16-13A-4. Board chairman; members' compensation; procedure; district name.
16-13A-5. General manager of board.
16-13A-6. Employees of board.
16-13A-7. Acquisition and operation of district properties.
16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.
16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
16-13A-9a. Limitations with respect to foreclosure.

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§ 16-9F-3. Penalties.

(a) Any person who knowingly violates the provisions of this article with a total quantity of less than two cartons of cigarettes shall, for the first offense, be punished by a civil penalty of no more than one thousand dollars, and for a second or subsequent offense involving a total quantity of less than two cartons of cigarettes shall be punished by a civil penalty of no more than five thousand dollars and the revocation for a period of six months of any business held by the person.

(b) Any person who knowingly violates the provisions of this article with a total quantity of two or more cartons of cigarettes shall, for the first offense, be punished by a civil penalty of no more than two thousand dollars, and for a second or subsequent offense involving a total quantity of two or more cartons of cigarettes shall be punished by a civil penalty of no more than fifty thousand dollars and the revocation for a period of one year of any business registration certificate held by the person. (2003, c. 246.)

§ 16-9F-4. Enforcement.

The attorney general, the prosecuting attorney for the county in which counterfeit cigarettes are found or any person who holds a valid permit under 26 U.S.C. § 5712 may bring an action in the circuit court of that county to prevent or restrain violations of this article by any person, or any person controlling that person. (2003, c. 246.)

ARTICLE 13.

SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

Sec.
16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjustment; hearing; lien and recovery; discontinuance of services.

Effect of amendment of 2004. — Acts 2004, c. 185, effective June 10, 2004, substituted "Sewage Works of Municipal Corporations and Sanitary Districts" for "Sewage Works and Stormwater Works" in the article heading.

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§ 16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjust-

ment; hearing; lien and recovery; discontinuance of services.

The governing body shall have power, and it shall be its duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use of and the service rendered by:

(a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality, or that in any way uses or is served by such works; and

(b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate, or building that in any way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

(c) The governing body may change and readjust such rates, fees or charges from time to time. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

(d) All new applicants for service shall indicate to the governing body whether they are an owner or tenant with respect to the service location.

(e) The governing body may collect from all new applicants for service a deposit of fifty dollars or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnecting or reinstatement of service may be made by the governing body until another deposit equal to fifty dollars or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the governing body. After twelve months of prompt payment history, the governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as the public service commission may prescribe: Provided, That where the customer is a tenant, the governing body is not required to return the deposit until the time the tenant discontinues service with the governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The governing body may, under reasonable rules promulgated by the public service commission, shut off and discontinue water services to a delinquent user of sewer facilities ten days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments.

(f) Such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replace-

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ments and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be considered the revenues of the works.

(g) No such rates, fees or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates, fees or charges.

(h) After introduction of the ordinance fixing such rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates, fees or charges, shall be given by publication as a Class II-0 legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. The first publication shall be made at least ten days before the date fixed in such notice for the hearing.

(i) After such hearing, which may be adjourned from time to time, the ordinance establishing rates, fees or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of such rates, fees and charges so established shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

(j) Any change or readjustment of such rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as hereinbefore provided: Provided, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates, fees or charges shall always be sufficient for such expense of operation, repair and maintenance and for such sinking fund payments.

(k) All rates, fees or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate, fees or charge so established is not paid within twenty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the municipality, and in connection with such action said lien may be foreclosed against such lot, parcel of land or building, in accordance with the laws relating thereto: Provided, That where both water and sewer services are furnished by any municipality to any premises the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof.

(*l*) Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of twenty 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 rates, fees and charges are fully paid. When any payment for rates, rentals, fees or charges becomes delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

(m) The board collecting such rates, fees or charges shall be obligated under reasonable rules to shut off and discontinue both water and sewer services to all delinquent users of either water facilities, or sewer facilities or both, and shall not restore either water facilities or sewer facilities, to any delinquent user of either until all delinquent rates, fees or charges for both water facilities, and sewer facilities, including reasonable interest and penalty charges, have been paid in full. (1933, Ex. Sess., c. 25, § 16; 1933, 2nd Ex. Sess., c. 48; 1959, c. 125; 1967, c. 105; 2001, c. 212; 2004, c. 185.)

Effect of amendment of 2004. — Acts 2004, c. 185, effective June 10, 2004, inserted "deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit" in the introductory language; added the subsection designations for (c) through (m); added (d) and (e); substituted "Class II-0" for "Class II-O" in (h); substituted "within twenty days" for "within thirty days" in (k); in (*l*) substituted "twenty days" for "thirty days" and added the second sentence; and deleted "and regulations" following "reasonable rules" in (m).

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

Sec.
16-13A-1c. General purpose of districts.
16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.
16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.
16-13A-5. General manager of board.
16-13A-7. Acquisition and operation of district properties.
16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.
16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
16-13A-14. Items included in cost of properties.
16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.
16-13A-24. Acceptance of loans, grants or temporary advances.
16-13A-25. Borrowing and bond issuance; procedure.

§ 16-13A-1. Legislative findings.

Code of State Rules References. — Government of public service districts, 150 CSR 17, effective September 1, 1990.

§ 16-13A-1c. General purpose of districts.

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of, properties supplying water, sewerage or stormwater services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may

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State of West Virginia

Certificate

I, Joe Manchin, III, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 22C, ARTICLE 2, OF THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on

September 27, 2004

Secretary of State

§ 22C-1-27. Authorized limit on borrowing.

The aggregate principal amount of bonds and notes issued by the authority may not exceed five hundred million dollars outstanding at any one time: Provided, That before the authority issues bonds and notes in excess of four hundred million dollars the Legislature must pass a resolution authorizing this action: Provided, however, That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the authority or by exchange for any refunding bonds or notes, shall be excluded. (1994, c. 61; 1995, c. 252; 2000, c. 278.)

Effect of amendment of 2000. — Acts 2000, c. 278, effective March 11, 2000, substituted "authority may" for "authority shall", substituted "five hundred million dollars" for "three hundred million dollars" and inserted "That before ... Provided, however".

ARTICLE 2.

WATER POLLUTION CONTROL REVOLVING FUND ACT.

Sec.
22C-2-1. Definitions.
22C-2-2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.
22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.
22C-2-4. Annual audit.
22C-2-5. Collection of money due to the fund.
22C-2-6. State construction grants program established; special fund.
22C-2-7. Environmental review of funded projects.
22C-2-8. Conflicting provisions.

Editor's notes. — The Water Pollution Control Revolving Fund Act was formerly compiled in §§ 20-5I-1 et seq.

§ 22C-2-1. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Authority" means the water development authority provided for in section four [§ 22C-1-4], article one of this chapter.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local entity that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

(1) Developmental, planning and feasibility studies, surveys, plans and specifications;

(2) Architectural, engineering, financial, legal or other special services;

(3) Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;

(4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;

(5) The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, and the funding of accounts and reserves which the authority may require; and

(6) Other items that the division of environmental protection determines to be reasonable and necessary.

(c) "Fund" means the state water pollution control revolving fund provided for in this article as it may be expanded or modified from time to time pursuant to the clean water act, as amended, the federal safe drinking water act, as amended or by the executive order of the governor issued to comply with federal laws relating to the acts.

(d) "Instrumentality" means the division of environmental protection or the agency designated by an order of the governor as having the primary responsibility for administering the fund pursuant to the federal clean water act, as amended, and the federal safe drinking water act, as amended, or other federal laws.

(e) "Local entity" means any county, city, town, municipal corporation, authority, district, public service district, commission, banking institution or political subdivision in West Virginia.

(f) "Project" means any public water or wastewater treatment facility located or to be located in or outside this state by a local entity and includes:

(1) Sewage and wastewater collection, treatment and disposal facilities;

(2) Public water transportation, treatment and distribution facilities;

(3) Drainage facilities and projects;

(4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;

(5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and

(6) Other projects allowable under federal law. (1994, c. 61; 1996, c. 257.)

§ 22C-2-2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.

The division of environmental protection shall act as the instrumentality that is empowered to enter into capitalization agreements with the United States environmental protection agency, to accept capitalization grant awards

made under the federal clean water act, as amended, the safe drinking water act, as amended, and other federal laws and to otherwise manage the fund provided for in this article in accordance with the requirements of said federal laws. (1994, c. 61.)

§ 22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.

(a) Under the direction of the division of environmental protection, the water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local entities, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local entities to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the division of environmental protection in administering the provisions of this article: Provided, however, That moneys in the fund shall be used to make grants for projects to the extent allowed or authorized by federal law.

(b) The director of the division of environmental protection, in consultation with the authority, shall promulgate legislative rules in accordance with the provisions of article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code, to:

(1) Govern the disbursement of moneys from the fund; and

(2) Establish a state water pollution control revolving fund program to direct the distribution of grants or loans from the fund to particular local entities and establish the interest rates and repayment terms of the loans.

(c) In order to carry out the administration and management of the fund, the authority is authorized to employ officers, employees, agents, advisers and consultants, including attorneys, financial advisers, engineers, other technical advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall promulgate legislative rules in accordance with the provisions of article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this

article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code. (1994, c. 61; 1996, c. 257.)

Code of State Rules References. — State water pollution control revolving fund program, 47 CSR 31, effective May 4, 2000.

§ 22C-2-4. Annual audit.

The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants, and the cost thereof may be defrayed as a part of the cost of construction of a project or as an administrative expense under the provisions of subsection (a), section three [§ 22C-2-3(a)] of this article. (1994, c. 61.)

§ 22C-2-5. Collection of money due to the fund.

In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

(a) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local entity pursuant to this article, and may proceed directly to enforce and collect the service charges, together with all necessary costs of the enforcement and collection.

(b) The authority may exercise, in its own name or in the name of and as the agent for a particular local entity, all of the rights, powers and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

(c) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local entity of all of the terms and conditions of the loan agreement between the state and that local entity including:

(1) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(2) The enforcement and collection of service charges; and

(3) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision.

The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement. (1994, c. 61; 1996, c. 257.)

§ 22C-2-6.

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§ 22C-2-6. State construction grants program established; special fund.

(a) The director of the division of environmental protection shall promulgate rules in accordance with the provisions of chapter twenty-nine-a [§§ 29A-1-1 et seq.] of this code to establish a state construction grants program that is designed to complement and supplement the state water pollution control revolving fund program established pursuant to subsection (b), section three [§ 22C-2-3(b)] of this article.

(b) The special fund designated "The West Virginia Construction Grants Fund" established in the state treasury is continued. The special fund shall be comprised of moneys appropriated to said fund by the Legislature, assessments on existing wastewater treatment facilities, and all other sums designated for deposit to the special fund from any source, public or private: Provided, That such assessments shall be made and collected in accordance with fee schedules to be established by legislative rules promulgated by the director of the division of environmental protection, in accordance with chapter twenty-nine-a of this code. Moneys in the special fund shall be used solely for the state construction grants program established under subsection (a) of this section: Provided, however, That moneys in the special fund may be utilized to defray the costs incurred by the division of environmental protection in administering the provisions of this section. (1994, c. 61.)

Code of State Rules References. — State construction grants program rule, 47 CSR 33, effective May 7, 1999.

§ 22C-2-7. Environmental review of funded projects.

(a) The division of environmental protection shall conduct an environmental review on each project funded under this article. The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to implement the environmental review of funded projects: Provided, That the rules shall be consistent with the regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the division of environmental protection is authorized to direct a local entity, or its agent, to implement all measures that, in the judgment of the director, are necessary in order to mitigate or prevent adverse impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of the projects under the federal clean water act, as amended. (1994, c. 61; 1996, c. 257.)

Code of State Rules References. — State water pollution control revolving fund program, 47 CSR 31, effective May 4, 2000.

§ 22C-2-8. Conflicting provisions.

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article are controlling. (1994, c. 61.)

ARTICLE 3.

SOLID WASTE MANAGEMENT BOARD.

Sec.
22C-3-1. Short title.
22C-3-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.
22C-3-3. Definitions.
22C-3-4. Solid waste management board; organization of board; appointment and qualification of board members; their term of office, compensation and expenses; director of board.
22C-3-5. Board to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law.
22C-3-6. Powers, duties and responsibilities of board generally.
22C-3-7. Development of state solid waste management plan.
22C-3-8. Power of board to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.
22C-3-9. Development and designation of solid waste disposal sheds by board.
22C-3-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.
22C-3-11. Establishment of reserve funds, replacement and improvement funds and sinking funds; fiscal agent; purposes for use of bond proceeds; application of surplus.
22C-3-12. Legal remedies of bondholders.
Sec.
22C-3-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.
22C-3-14. Use of funds, properties, etc., by board; restrictions thereon.
22C-3-15. Audit of funds disbursed by the board and recipients thereof.
22C-3-16. Rentals, fees, service charges and other revenues from solid waste disposal projects; contracts and leases of board; cooperation of other governmental agencies; bonds of such agencies.
22C-3-17. Maintenance, operation and repair of projects; repair of damaged property; reports by board to governor and Legislature.
22C-3-18. Solid waste disposal revenue bonds lawful investments.
22C-3-19. Exemption from taxation.
22C-3-20. Governmental agencies authorized to convey property.
22C-3-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.
22C-3-22. Conduct of proceedings of board.
22C-3-23. Regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; giving testimony at commission hearings.
22C-3-24. Cooperation of board and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.
22C-3-25. Liberal construction of article.

PART I

THE CHARTER*

CHAPTER 18

(House Bill No. 598—Mr. Heaberlin.)

AN ACT creating the municipal corporation of the City of Beckley, in the County of Raleigh, and annulling the charter granted to the said City of Beckley by Chapter one, Acts of Legislature of West Virginia, extra session, one thousand nine hundred and eight, passed on the fourteenth day of February, one thousand nine hundred and eight.

(Passed April 26, 1927. In effect ninety days from passage. Became a law without the approval of the Governor.)

Sec. 1. City of Beckley to be body corporate.

That the inhabitants of that portion of Raleigh County, in the State of West Virginia, included within the boundary described in section two of this act, now a municipal corporation, existing and known as the "City of Beckley," shall continue to be a body politic and corporate under the same name, and as such shall have perpetual succession; may use a corporate seal; may sue and be sued; plead and be impleaded; contract and be contracted with; purchase, sell, lease and hold real estate and personal property, necessary to the purpose of said corporation.

Sec. 2. Corporate limits.

The corporate limits of the City of Beckley are bounded as follows: Beginning at a corner monument set in the northern right of way boundary line of the Piney River and Paint Creek Branch of The Chesapeake and Ohio Railway Company and in the southern boundary line of Central Avenue at or near the southern end of Wilkes Avenue, the said beginning point being a common corner of the City of Beckley and the Town of Mabscott; thence following the common boundary line between the City of Beckley and the Town of Mabscott as established by survey in 1951 by Paul W. Feigley, N. 24 degrees 23 minutes E. 320.00 feet to a corner monument; thence N. 58 degrees 37 minutes W. 1848 feet to a corner monument; thence N. 76 degrees 34 minutes W. 1813.65 feet to a steel rail in Wickham Avenue of the Town of Mabscott which is the road leading from Mabscott to Mt. Tabor; thence leaving the boundary line of the Town of Mabscott and following the said road leading from Mabscott to Mt. Tabor, for a distance of approximately 900 feet to the point where said road crosses Laurel Branch; thence leaving the said road and up said Lauren Branch following the meanderings thereof approximately 3900 feet to the point where said Branch crosses the southeastern boundary line of the McLean Addition; thence leaving the middle of said Laurel Branch and following the boundary lines of the McLean Addition, S. 52 degrees 13 minutes W. 2500 feet, more or less, to a stake in a chestnut stump, the southernwest corner of the McLean Addition; thence N. 47 degrees 28 minutes W. 449.75 feet to the westernmost corner of the McLean Addition; thence following the northeast boundary line of the McLean Addition and the boundary line between Otho Hall and the John W. Ball estate approximately S. 66 degrees 00 minutes E. 1800 feet to a property corner of said Otho Hall and the John W. Ball estate on the west side of West Virginia Highway No. 3; thence crossing said highway 90

*Editor's note—The charter here set out is as contained in the book of the 1971 Code of the city; except that the term "recorder" has been changed to "recorder-treasurer", the term "county court" has been changed to "county commission", and the term "justice of the peace", has been changed to "magistrate". This charter was enacted by the state legislature on April 26, 1927; amendments are indicated by historical citations following the amended sections. Some of the section catchlines had been changed by the editor for purposes of amplification or clarification.

State law reference—For state law as to effect of the Municipal Code of West Virginia (W. Va. Code, Ch. 8) on legislative charters, see W. Va. Code, § 8-1-6.

Annotation—For a case in which the state Supreme Court of Appeals took judicial notice of the Beckley City Charter, see State v. Mills, 150 S.E. 142.

feet to a set stone, a corner of the Ewart Heights Addition and the New River Company; thence with the boundary line between the Ewart Heights Addition and the New River Company 1800 feet to northeast corner of the Ewart Heights Addition; thence with C. & O. right of way line N. 60 degrees 27 minutes E. 489.46 feet to a C. & O. concrete marker; thence N. 49 degrees 56 minutes E. 97.14 feet; N. 53 degrees 33 minutes E. 99.37 feet; N. 59 degrees 26 minutes E. 146.74 feet; N. 71 degrees 36 minutes E. 25.15 feet to the intersection of said right of way line, west line of Sprague Road; thence with said road line S. 17 degrees 32 minutes E. 92.93 feet; S. 17 degrees 12 minutes E. 54.92 feet; S. 53 degrees 19 minutes E. 68.76 feet; S. 87 degrees 45 minutes E. 219.50 feet; S. 71 degrees 36 minutes E. 54.28 feet; S. 43 degrees 50 minutes E. 28.08 feet; thence crossing Sprague Road 30 feet; thence S. 63 degrees 04 minutes E. 151.94 feet; S. 23 degrees 39 minutes E. 200 feet; thence N. 80 degrees 00 minutes E. 1066.03 feet to a set stone in western right of way line of the Piney River and Paint Creek Branch of the C. & O. Railway Company marked "City of Beckley"; thence following the said western right of way boundary line of said railway in a northeasterly direction to the point where said right of way boundary line crosses Little Whitestick; thence leaving the said right of way boundary line and down the middle of Little Whitestick Creek following the meanderings thereof to the point where Little Whitestick Creek crosses the eastern right of way boundary line of U. S. Highway No. 19-21 By-Pass; thence with the said eastern right of way boundary line of said U. S. Highway No. 19-21 By-Pass, to the intersection with the southern right of way boundary line of South Kanawha Street (Business Route 19-21); thence leaving the said eastern right of way boundary line of U.S. Highway No. 19-21 By-Pass, and following the southern right of way boundary line of South Kanawha Street, Business Route No. 19-21, in a northwesterly direction to its intersection with the southwestern boundary line of MacArthur Street; thence with the southwestern right of way boundary line of said MacArthur Street along the golf course fence in a northwesterly direction to a point in the western boundary line of the Glen Morgan Addition of the Raleigh Coal and Coke Company about 75 feet south of South Kanawha Street; thence with the said western boundary line of Glen Morgan Addition, S. 27 degrees 19 minutes W. 1100 feet, more or less, to a point of the division line between Lots 17 and 18 of Section 10 of said Glen Morgan Addition; thence S. 18 degrees 54 minutes E. 1420 feet, more or less to a white oak, a corner of the Beckley Court Addition and a point in the southern boundary line of Terrill Street; thence with the southern boundary line of Terrill Street which is also the southern boundary line of The Beckley Court Addition, S. 14 degrees 26 minutes W. 494.00 feet to a maple; thence S. 73 degrees 46 minutes W. 1403.33 feet to a white oak; thence No. 76 degrees 32 minutes W. 1339.97 feet to a stake; thence N. 34 degrees 04 minutes W. 1281.56 feet to a corner of the Beckley Court Addition; thence N. 34 degrees 04 minutes W. 735.00 feet to a corner of the Lilly Land Company Addition No. 2; thence with the boundary line of said Lilly Land Company No. 2, S. 85 degrees 06 minutes W. 131.96 feet to a point in the south line of Thirteenth Street; thence S. 34 degrees 55 minutes E. 168.30 feet to a corner of the Phipps Addition; thence S. 9 degrees 21 minutes E. 547.85 feet to the southeast corner of the Phipps Addition; thence S. 80 degrees 45 minutes W. 125.00 feet to the point where the Happy Hollow Branch crosses the southern boundary line of the Phipps Addition; thence down said Happy Hollow Branch following the meanderings thereof 450.00 feet, more or less, to the mouth of said branch; thence continuing the same general direction 100.00 feet; more or less, to a point in the northern right of way boundary line of the Piney Creek Branch of the Chesapeake and Ohio Railway Company; thence following the northern right of way boundary line of said railway in a westerly direction for a distance of 5830.00 feet to a point opposite Beckley Junction near the intersection of Cova Street; thence crossing the right of way of Piney Creek Branch of said railway, in a southwesterly direction about 90.00 feet to a point in the southern right of way boundary line; thence following the said southern right of way boundary line of said Piney Creek Branch and the western and northern right of way boundary line of the Piney River and Paint Creek Branch

of the Chesapeake and Ohio Railway Company to the point of beginning.
(Election of 8-3-54)

Editor's note—See official city map in office of recorder-treasurer for subsequent additions to city by annexation election, minor boundary adjustment and annexation by petition upon order of the common council.

Sec. 3. City may be divided into wards.

Immediately upon the adoption of this provision as provided by law, the common council of said city shall appoint a nonpartisan committee whose duty it shall be to divide the city into at least five (5) but not more than nine (9) wards, the number to be determined by the said common council, having due regard to the precincts already established, the density of the population of the territory embraced in each ward and the equalization of the population of the several wards. The division into wards shall be completed not less than ninety (90) days before the first municipal primary election held hereafter.

The number of the wards within the above limits and the boundaries of the same may be changed from time to time by a similar committee appointed by the common council; provided, however, that no wards shall be created or changes made in the boundaries within sixty (60) days next preceding any municipal primary election.
(Election of 8-3-54)

Editor's note—For designation and boundaries of city wards, see official city map which is on file in the office of the recorder-treasurer.

Sec. 4. City officers.

The municipal authorities of said city shall be a mayor, recorder-treasurer, police judge, and five (5) councilmen until the city shall be divided into wards as provided by section 3 of this act. Then the municipal authorities of said city shall be a mayor, recorder-treasurer, police judge; and one (1) councilman from each ward who shall be nominated and elected by the qualified voters therein; and two (2) councilmen who shall be nominated and elected at large by all of the qualified voters of the city.
(Election of 8-3-54)

Sec. 5. Common council to exercise corporate powers.

All the corporate powers and functions pertaining to said city shall be exercised by its council, or under its authority, in the corporate name of said city, unless otherwise provided by state law or municipal ordinance.

Editor's note—The legislative body of the city is referred to in the 1927 charter and the 1954 amendments thereto as the "common council", the "city council", and simply as the "council". But see § 31 of the charter, which provides that the council of the city shall be officially known as and called the "Common Council of the City of Beckley".

Sec. 6. Elective and appointive officers; procedure for appointment.

The mayor and councilmen shall be elected by the qualified voters of the said city. All other officers except a city manager of said city shall be nominated by the mayor, and he shall, by and with advice of the council (a majority of all the councilmen elected concurring by yeas and nays), appoint all officers whose offices are established by this act. No persons, after being rejected by the council shall be nominated for the same office, unless at the request of council.
(Election of 8-3-54)

Sec. 7. List of appointive officers; salaries; term of office; removal of fire department members.

The mayor shall nominate a recorder-treasurer, a city engineer, a police judge, a city solicitor, a chief of police, a building inspector and all other officers except a city manager, whose offices may be established by ordinance of the city council or by this act, and such officers shall hold the respective offices to which they are appointed during the will and pleasure of council, except members of the fire department who may be removed at will by the mayor or any other officer so empowered by the council, or for incompetence, misfeasance or neglect of duty, or other good cause by the council, or until their successors are appointed and qualified. The several offices, or any two (2) or more may be held by the same person, provided the mayor and councilmen shall not be eligible to any of the appointive offices, and such officers shall receive such compensation as the

council may prescribe, by ordinance or order, unless said compensation be fixed by this act.
(Election of 8-3-54)

Sec. 7a. Authority to appoint city manager; effect of appointment.

The city council in its discretion may appoint a city manager to serve at the pleasure of the council. At the time of such appointment an ordinance shall be adopted by the council delegating to such officer such powers and duties as in the opinion of the council he shall exercise, and the council may from time to time make such amendments and changes in said ordinance as it may desire.

When such an appointment has been made and such an ordinance shall have been adopted, this shall constitute an election by the council to operate under a city manager form of government, and such action shall not be rescinded thereafter except a change in this charter.
(Election of 8-3-54)

Sec. 8. Qualifications of mayor and councilmen.

No person shall be eligible to the office of mayor or councilman unless at the time of his election he is legally entitled to vote in the city election for member of the common council; and he was for the preceding year assessed with taxes upon real or personal property within the said city of the assessed aggregate value of at least three hundred dollars ($300.00) and shall actually have paid the taxes so assessed; provided, that when the city shall have been laid off into wards, no person shall be elected a councilman from any ward unless he shall have been, for at least sixty (60) days next preceding the election a bona fide resident of the ward for which he is elected, and the removal of a councilman from the ward from which he is elected shall vacate his office.
(Election of 8-3-54)

Sec. 9. Who may vote in city elections.

Every male and female person residing in said city shall be entitled to vote for all officers elected under this Act, except any person who is a minor, or of unsound mind, or a pauper, or who is under conviction of treason or bribery in an election, or who has not been a resident of this state for one year and of said city for six (6) months next preceding the election at which he desires to vote; provided, that when said city shall have been laid off into wards no person therein shall be entitled to vote for a councilman for his ward unless he shall have been a bona fide resident of such ward for at least sixty (60) days next preceding the municipal election.

Sec. 10. Conduct of primary and general elections; when held; filing fee; state laws applicable.

All nominations shall be made by primaries duly called, which shall be held not less than thirty (30) days before the general municipal election, and it shall be the duty of the said recorder-treasurer to certify and enter of record all persons nominated, and no person whose nomination has not been so certified is eligible to be voted upon for office in said city. The first general municipal election hereunder shall be held on the fourth Tuesday in May, 1955, and other elections hereunder shall be held on the fourth Tuesday in May every four (4) years thereafter and the term of office shall begin on the first day of July after each such election. Each election shall be conducted under and by the direction of the council of the said city. The mode of voting shall be by ballot, but the voters shall be left free to vote an open or secret ballot, as they may elect. The election in said city shall be held and conducted and the result thereof certified, returned and finally determined under the laws in force in this state relating to general elections, except that the persons conducting said election shall, on the day the election is held deliver the ballots, tally sheets and poll books to the recorder-treasurer for safe keeping, and thereafter the council of said city shall meet within five (5) days (Sunday excepted) after said election and canvass the returns of said election, and declare the results thereof, and in all respects comply with the requirements of the statutes of the state relating to elections. The corporate authorities of said city shall perform all duties in relation to such election as the corresponding county officers carrying out similar duties for the county and in general, except as herein

otherwise provided, shall be governed by the election laws prescribed in the Code of West Virginia.

(a) [The] common council of said city shall, not later than the fifteenth day of March next preceding the election to be held on the fourth Tuesday in May, call a primary election, which shall be conducted in accordance with the laws in force in this state.

(b) When the city shall have been laid off into wards, each ward shall contain such number of voting precincts as the council shall deem advisable to place therein, but no precinct or part thereof shall lie in more than one ward.

(c) The common council shall fix a filing fee not to exceed ten dollars ($10.00) for each elective office.

All of the provisions of Chapter Three of the Code of West Virginia, 1931, and the amendments thereof, relating to elections are hereby adopted, so far as applicable, subject to the modifications contained herein.
(Election of 8-3-54)

State law references—For state law as to conduct of general elections, see W. Va. Code, Ch. 3, Art. 6; as to conduct of primary elections, see W. Va. Code, Ch. 3, Art. 5; see also § 8-5-14.

Sec. 11. How tie vote decided.

Whenever two (2) or more persons receive an equal number of votes for mayor, recorder or councilman, such tie shall be decided by the council in existence at the time the election is held.

Editor's note—This section, which mentions the recorder, is as enacted by the legislature in 1927; § 6 of the charter, as enacted in 1927, provided that the recorder be elected, but § 6 as amended by the voters on Aug. 3, 1954, now provides that only the mayor and councilmen be elected, and § 11 (this section) was not amended to conform to § 6 as amended.

Sec. 12. Contested elections.

All contested elections shall be heard and determined by the council in existence at the time the election is held, and the contest shall be made and conducted in the manner as provided for in contests for county and district officers, and the council by their proceedings in such cases shall, as nearly as practicable, conform with like proceedings of the county commission in such cases.

State law references—See Art. 9, § 9, W. Va. Constitution; name changed November 5, 1974, to "county commission" for state law as to proceedings of county courts in election contests, see W. Va. Code, §§ 3-7-6, 3-7-7.

Sec. 13. Vacancies in appointive offices.

Whenever a vacancy from any cause shall occur in any appointive office, such vacancy shall be filled as provided by section six of this act; and, in case of vacancy in the office of councilman, recorder-treasurer or mayor, the remaining members of the council shall fill said vacancy.

Editor's note—This section is as enacted by the legislature in 1927; § 6, as amended by the electorate on Aug. 3, 1954, now provides that the recorder-treasurer be appointed. This section has not been amended to conform to § 6, as amended.

Sec. 14. Oath of office.

The mayor, recorder-treasurer and councilmen, and all other officers provided for in this act, shall each, before entering upon the duties of their offices, and within fifteen (15) days after being elected or appointed, take and subscribe an oath to support the constitution of the United States, the constitution of the State of West Virginia, and to faithfully and impartially discharge the duties of his office to the best of his skill and judgment, and to account for and pay over, as required by law, all moneys which may come into his hands by virtue of his office.

Sec. 15. Which officers to be bonded; terms, conditions, etc., of official bonds.

The recorder-treasurer of said city shall be required to give bond before entering upon the discharge of his duties in such sum as the council may require, but not less than ten thousand dollars ($10,000.00). The police judge shall, before entering upon the discharge of his duties, give bond in the sum of five thousand dollars ($5,000.00). All members of the police force shall give bond before entering upon the discharge of their duties in the sum of not less than three thousand five hundred dollars ($3,500.00). The council may, in its discretion, require bond of any other officer of the city in such amount as it may prescribe.

All bonds, obligations or other writings taken in pursuance of any provisions of this act or under the provisions of any order of said council, shall be made payable to the City of Beckley. Official bonds shall be conditioned to faithfully and impartially discharge the duties of such official's office and to account for and pay over, as required by law, all moneys coming into his hands by virtue of his office. All other bonds shall be conditioned as the council may prescribe.

The obligors in all bonds, their heirs, executors, administrators and assigns bound thereby, shall be subject to the same proceedings on such bonds, obligations or writings for enforcing the conditions or the terms thereof, by motion or otherwise, before any court of record having jurisdiction thereof, held or acting in or for said Raleigh County as the sheriff of said county, his deputies and their sureties.

Such officials as are herein required to give bonds shall give corporate surety bonds. The premium on the bond required of the recorder-treasurer and police judge shall be paid out of the city treasury.

Sec. 16. Term of office.

The mayor, recorder-treasurer and councilmen shall enter upon the duties of their offices upon the first day of July next after their election and their terms of office shall be for a period of four (4) years. All appointive officers shall enter upon their duties as soon as they have qualified, and shall remain in office during the will and pleasure of the council, or mayor, as hereinbefore provided.
(Election of 8-3-54)

Editor's note—The office of the recorder is no longer an elective office under the provisions of § 6, as amended by the electorate on Aug. 3, 1954. This section was also amended on that date, but was not made wholly to conform to § 6, as amended, by deletion of reference herein to the recorder.

Sec. 17. Powers and duties of mayor, and of city manager if and when appointed; who acts in absence of mayor.

The mayor shall be the chief executive officer of said city and shall have and exercise all the rights, powers and duties of mayor conferred by the terms of this Act and it shall be his duty to see that the laws and ordinances of the city and the resolutions and orders of the council are enforced; that peace and good order of the city are preserved, and that the person and property therein are protected. In vacation of the council, the mayor may appoint special police officers whenever he deems it necessary. He shall, from time to time, recommend to the council such measures as he may deem needful for the welfare of the city.

In the event the council shall appoint a city manager, the council may delegate to him each of the above powers as in the council's opinion it is advisable or necessary to do.

The mayor shall be the presiding officer of the council. In his absence, the council shall select one of their own number to preside in the mayor's stead, and such councilman so selected shall, during the absence of the mayor, be clothed with all the power and authority of the mayor, limited to the same restrictions, and charged with the performance of the same duties as are vested in and incumbent upon the mayor under this act. The mayor shall only vote in council meetings in case of a tie.
(Election of 8-3-54)

Sec. 18. Powers and duties of recorder-treasurer; entry of ayes and nays in journal; office space for and hours of recorder-treasurer.

It shall be the duty of the recorder-treasurer to attend all council meetings and record in a journal an accurate record of all its proceedings, acts, orders, resolutions and ordinances, which shall be indexed and kept open during all reasonable hours for the inspection of the citizens of the city. The proceedings of the last meeting shall be read to the council, corrected when necessary, and signed by the person presiding for the time being, and the recorder. Upon the request of any member, the ayes and nays on any question shall be recorded in the journal.

The recorder-treasurer shall also be the custodian of all city records, money, bonds, notes and certificates, together with all valuable papers of every kind and character which may come into his hands under and by virtue of his said office, and he shall be chargeable with and it shall be his duty to collect the city taxes, levies, assessments, fines and penalties under such regulations

as the council of said city may, by ordinance, prescribe; and such recorder-treasurer shall have the same powers and authority to distrain and sell property for delinquent taxes, levies, assessments, fines and penalties in like manner and to the same extent and effect as authorized and prescribed by the laws of the State of West Virginia for and respecting the collection of state and county taxes and levies.

The recorder-treasurer shall furnish the council upon its request with a statement showing all collections made since the last statement, and all disbursements during that time, as well as any other facts relating to the finances of the city as the council may require. He shall, in addition to the enumerated duties required of him under this act, do and perform such other matters and things as the council may, from time to time, prescribe or require of him.

All moneys coming into the hands of said recorder-treasurer shall be forthwith deposited by him in the name of the City of Beckley, in such of the local banks as the council shall designate as city depositories. The council may require indemnity bonds of such depositories if it deems it advisable so to do.

It is hereby made the duty of the council to provide the recorder-treasurer with suitable and proper office space in which to transact the main duties of his office, and if practical so to do, such office shall be located in the city hall for the convenience of the citizens of said city; and when such office is so provided, it is hereby made the duty of such recorder-treasurer to keep regular office hours each day, Sundays and legal holidays excepted.
(Election of 8-3-54)

State law reference—For state law as to distraint and sale of property for delinquent taxes, see W. Va. Code, §§ 8-13-15 and 11A-2-3 et seq.

Sec. 19. Police court and its jurisdiction.

The judicial power of the city shall be vested in a police court. Said court shall have exclusive jurisdiction of all criminal proceedings for the violation of any ordinance, and concurrent jurisdiction with magistrates and other courts of all civil actions and proceedings arising out of a violation of said ordinance, and for the collection of any license, assessment or tax imposed by ordinance; and of the following offenses committed within the city (except when prosecuted by indictment or information): Petty larceny, assault and battery, breaches of the peace, rioting, committing wilful injury to property, and all misdemeanors punishable by fine or imprisonment in the county jail, or both; proceeding respecting vagrancy, lewd or disorderly persons; and exclusive jurisdiction of all offenses not properly falling under the jurisdiction of other courts. No jury shall be summoned to try any case in said court.
(Election of 8-3-54)

Sec. 19a. City prosecutor.

When in the opinion of the mayor of the city it is necessary or advisable to do so, the mayor may nominate a city prosecutor, subject to the approval of the council as provided in section 6, who shall hold office during the will and pleasure of the council. The salary of such prosecutor shall be fixed by the council. The city prosecutor shall have the same qualifications as those set forth in section 22 for the city solicitor.

His duties shall be to represent the city in all criminal matters originating in the police court for the violation of any city ordinance and on appeal from said court to any other court from proceedings so originating. He also shall, upon request, advise members of the police department and other officials of the city on any criminal matters arising out of the violation of any city ordinance.
(Election of 8-3-54)

Sec. 20. Qualifications, powers and duties of police judge; commitment of prisoners; appeals from police court; recorder-treasurer to collect fines and costs.

The police court shall be presided over by a police judge who shall be a practicing attorney of the Raleigh County bar, in good standing, and a citizen of the City of Beckley. The police judge shall within the city have, possess, and exercise all the powers and perform all the duties vested by law in a magistrate, except that he shall have

no jurisdiction in civil cases or causes of action arising outside of the corporate limits of the city. He shall have the same power to issue attachments in civil suits as a magistrate of the county has, though the causes of action arose outside of the city, but if the cause of action arose outside of the city, said attachment shall be returnable to and be heard before some magistrate of the county. Any warrant or other process issued by him may be executed at any place in the county. He shall have the power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof, and in default of such payment he may commit the party in default to the jail of the county or the city until the fine or penalty and costs shall be paid, but the term of imprisonment in such cases shall not exceed thirty (30) days. The police judge shall also be vested with the same powers to issue capias pro fine, as are vested in courts of record with prosecuting attorney and circuit clerks, by virtue of the Code of West Virginia, but no bond shall be made payable more than ninety (90) days from the date thereof, and the city shall have all the rights to enforce the collection of such bonds as are authorized by said code. The common council of the city may authorize the acceptance by the police judge, city recorder-treasurer or his deputies, of cash appearance bonds in lieu of bonds secured by property. The expense of maintaining any person committed to the county jail by him, shall be borne by the city and taxed as costs, except it be to answer an indictment.

He shall not receive any money belonging to the state or individuals unless he gives such bond and security as is required of a magistrate, and all provisions of the said Code of West Virginia relating to moneys received by magistrates shall apply as to like moneys received by the police judge.

Appeals shall lie from the judgment of the police court to the Criminal Court or Circuit Court of Raleigh County, as the case may be, in accordance with law.

The police judge shall tax as costs in each case the same fees as are permitted to be taxed by magistrates in like cases. He shall keep an accurate record of all of his proceedings in a book to be called "Police Docket," and all fines and costs collected by him shall be promptly turned over to the recorder-treasurer, who shall thereupon receipt the same, and such docket together with an itemized statement of all fines and costs collected shall be kept as a permanent record by the city recorder-treasurer.

The police judge shall have the same powers to fine and imprison for contempt as are now vested in magistrates under the statutes.
(Election of 8-3-54)

State law reference—Power of magistrate court to issue attachments in civil cases, W. Va. Code, § 50-6-3.

Sec. 21. General powers of common council.

The council of said city shall have the general powers enumerated in the subdivisions of this section, as follows:

(1) To lay off, open, close, vacate or maintain public grounds, parks, public places, name and re-name the same, to have control and supervision thereover, to protect the same from damage or other injury by persons or property, to fix fines and punishments for any injury thereto in violation of any of the orders of said council, and to maintain good order and prevent violations of the ordinances of said city therein or thereon.

(2) To protect divine worship within the limits of said city, and to fix fines and punishment for disturbance of any assemblage of people, then and there, met for the worship of God, to prohibit any interference with or disturbance of divine worship or an assemblage or people met together for the worship of God by any person or persons loitering about the premises or places where such worship is being had or such assemblage is met, or from loitering in the public streets or public places adjacent thereto in such manner as to interrupt such worship.

(3) To acquire either by purchase, condemnation or any other modes provided by general law, ground within said city for such streets and alleys as the council may deem proper to locate, lay off, vacate, close, open, alter, grade, straighten, widen or narrow,

pave or repave, construct and keep in good repair, the roads, streets, alleys, pavements, sidewalks, crosswalks, drains, viaducts and gutters therein, for the use of the public or of any of the citizens thereof, and to improve and light the same and to keep the same clean and free from obstruction of every kind; that where said city shall be required to respond in damages by reason of injury to persons or property occasioned by the failure of any abutting owner to so provide or keep in repair any sidewalk along such property, after being notified by the council so to do, that such property owner shall be liable to the city for any sum of money, costs and counsel fees which it has been required to pay by reason thereof.

(4) To regulate the width of sidewalks and the streets and the width and the care of the public grounds or grass plots abutting thereon, and to order the sidewalks, footways, crossways, drains and gutters to be curbed, paved, or repaved and kept in good order, free and clean, and to provide for the removal of snow and ice therefrom, and for sprinkling the same by the owners or occupants of the real property next adjacent thereto, and to provide and enforce punishments for obstructing, injuring or preventing the free and proper use thereof, and to provide and enforce fines and penalties for throwing therein or thereon any paper, glass, rubbish, decaying substances or other things that would make said streets, sidewalks, grass plots, crosswalks, drains, or gutters unsightly or unhealthy.

(5) To regulate the use of the walks, highways, bridges, streets, alleys and gutters, and the rate of speed of travel thereon, and to prevent and punish for fast riding or driving thereon of any horse, bicycle, wheeled vehicle, wagon, steam or electric or traction engine, motor car or automobile, and to prevent injury to such streets, alleys, roads and highways from overloaded or improperly loaded vehicles where the council deems the public safety requires such regulation.

(6) To regulate the planting, trimming and preservation of shade trees, by persons and by corporations, in streets, alleys, roads, public grounds and places, and to require the owners of adjacent property to trim or remove any shade tree or ornamental shrubbery or other tree that in the opinion of the council is an obstruction to the streets, alleys or sidewalks, or a menace to public safety.

(7) The council shall have the right to require the owner or occupier of any property in the city to keep his premises clean and free from all matters that would endanger the health of the city, and may require the removal of any waste paper or waste material of any kind or character upon the private property of any citizen or property owner that would cause the spread of fire or when the council deems the same should be removed; and may require the removal or straightening of any fence, wire, palings, or other material enclosing any lot, when, in the opinion of the council, the same is dangerous or obstructs or encroaches upon the streets, alleys or sidewalks; provided, that in all such cases, if the owner or occupier of such property fails to do any of the things enumerated in this section required by the council, after notice by the council, the council may take such action as may be necessary to perform such acts and the expense thereof shall be charged to the property owner and collected as taxes are collected.

(8) To regulate the making of division fences of an unsightly nature and party walls by the owners of adjoining and adjacent premises and lots, in so far as the same shall not be in conflict with general law.

(9) To regulate or require drainage by the owner or occupier of any lot or other real estate, by proper drains, ditches, and sewers, and to require the owner or occupier of any lot to fill the same, at his own expense, so that water will not collect in a body thereon, or

so the same will not become a menace to public health.

(10) To regulate or prohibit street carnivals, or street fairs, or street parades, advertising exhibitions, or other exhibitions thereon, or the exhibition of goods, wares, merchandise, material or artificial curiosities upon any street, sidewalk, alley or public place of said city.

(11) To regulate or prohibit the ringing of bells, blowing of steam whistles, or use of hand-organs, or other instruments of any annoying character, or other music of itinerant performers in the streets, or public speaking and preaching in the streets, roads, parks, or public places of the municipality.

(12) To license, regulate or prohibit auctioneering.

(13) To license, regulate or prohibit the sale of goods, wares, merchandise, drugs or medicine on the streets or other public places.

(14) To prevent the illegal sale of tobacco, cigars, snuff, or cigarettes, within said municipality, and to prevent the smoking by any person under twenty-one (21) years of age, of any cigarette, in any public building, or upon any public grounds, street, alley, sidewalk or public place within the said city and to fix fines and punishments for violations thereof.

(15) To regulate control, or prohibit runners for hotels, boardinghouses and eating houses, and to regulate draymen or persons hauling or transporting for hire at and about the railroad depots and stations and other public places and in an assemblage of people within the said city.

(16) To regulate, assess and collect a license fee for the said city for the doing of anything or business on which a state license is required, under Chapter 8 of the Code of West Virginia, and as said chapter may be hereafter amended or added to, subject to the exceptions provided by general law.

(17) To establish, when the council may deem proper, locate and keep in repair market places and market houses, and regulate markets and prescribe the time for holding the same; to authorize the seizure thereat and destruction of any and all such foods and drink products as shall be found unwholesome, dangerous or offensive, and without recourse against the municipality for its cost or value.

(18) To regulate the sale of food and drink products, milk, fresh meats, fish and vegetables, and to provide penalties for the sale of any such that are unwholesome or unfit for use.

(19) To regulate and provide for the weighing of hay, coal and other articles for sale in the markets, or to residents of said city.

(20) To require the merchants and other persons selling goods, foods or materials that must be weighed, to keep correct scales, and to seize and destroy such as are found to be incorrect, and not corrected after due and proper notice to the owner or person using the same, without damage or expense to the municipality of the value thereof.

(21) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome.

(22) To regulate the keeping, handling and transportation of explosives and dangerous combustibles within the municipality; and to regulate or prohibit the use of firecrackers, sky rockets, toy pistols, air rifles or guns within the said municipality.

(23) For the purpose of promoting health, safety, morals or the general welfare of the city and community, the council is hereby empowered to establish building lines, regulate and restrict the location and use of buildings, structures and land for trade, industry, residence or other purposes.

(24) For any or all of said purposes the council may divide the city into districts of such number, shape and area as may be deemed best suited to carry out the purpose of this act, and within such districts it may regu-

late and restrict the erection, construction, alteration, repair or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

Annotation—For a 1949 case holding that subdivisions (23) and (24) of this section [21] authorized common council, subsequent to enactment of the Code of West Virginia, 1931, to adopt a zoning ordinance without holding a referendum as provided in W. Va. Code, § 8-24-48, see Baer v. City of Beckley, 133 W. Va. 459.

(25) Such regulations shall be made in accordance with a comprehensive plan, and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the over-crowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city.

(26) To regulate or prohibit the use of walls or walks for signs; to regulate or prevent the distribution or posting of any sign, bill or other paper that, in the opinion of the council or mayor, is indecent or immoral.

(27) To define by ordinance what shall constitute a nuisance, and to abate all nuisances whether defined or not, and to require the removal or abatement of any building, obnoxious business, sign board, bill board, signs, or other thing, which in the opinion of the council is a nuisance.

(28) To regulate or prohibit the distribution of hand bills, circulars and other advertisements of like kind, on the streets, roads, alleys, and public places, or the placing of same in private yards, buildings or other structures, without having first procured the consent of the owner or occupier of such property.

(29) To regulate or prohibit within the municipality or within one (1) mile of its corporate limits, the erection or maintenance of any slaughter house, soap factory, glue factory, lamp black factory, tannery or other house, shop or factory of like kind or character.

(30) To regulate or establish within said municipality public drinking fountains and water troughs; and to regulate the time and place and manner of bathing in pools, streams and public waters within the police jurisdiction of said municipal corporation.

(31) To prevent hogs, cattle, sheep, horses, and other animals and fowl of all kinds, from going at large in the municipality; and to establish and maintain places for their detention, make regulations respecting the same, appoint a pound master and define his duties and provide for the sale of such property impounded.

(32) To arrest, convict and punish any person for committing adultery or fornication, or for any lewd or lascivious cohabitation within said city, and for keeping an assignation house, house of ill fame, or for leasing or letting to any other person any house or other building to be kept or used as such, or for knowingly permitting any house, under the control of or owned by any person, to be used as an assignation house or house of ill fame; and to convict and punish for frequenting, entering or loitering in any assignation house or house of ill fame within said municipality.

(33) To arrest, convict and punish any person for importing, printing, publishing, selling, giving away, exhibiting, or distributing any book, picture or device, or other thing containing any obscene picture or language, or making any indecent representation.

(34) To restrain, convict and punish vagrants, mendicants, beggars, tramps, common prostitutes, and their associates, and drunken

or disorderly persons within the municipality, and to provide for their arrest and manner of punishment.

(35) To prevent and prohibit the use of indecent or profane language within the corporate limits, and to provide and fix punishment therefor.

(36) To prevent and prohibit any tumult, riot, quarrel, angry contention, or abusive language, and to prevent the use of insulting epithets, assaults, assault and battery, and fix fines and punishments therefor.

Annotation—For a case holding that § 21, subdivision (36) granted power to common council to enact ordinance making assault and battery an offense against the city, see State v. Mills, 150 S. E. 142.

(37) To prevent and prohibit trespass upon private property or the doing of anything which would annoy the owner or occupier of any premises, and to fix and provide fines and punishments therefor.

(38) To provide against danger or damages by fire, and to that end, to require, when the council may think necessary, an inspection of all the properties within the said city, and to require the owner or occupier of any property in which a defective or dangerous chimney or flue is found, to immediately repair the same, and to prevent the use thereof until repaired as required.

(39) To prohibit and prevent intoxication or drunkenness, and the drinking of intoxicants in any public place, store, streets, or alley, and to fix fines and penalties therefor.

(40) To prohibit, prevent and punish for anything that is against the good morals and common decency, or that would tend to corruption, vice or crime.

(41) To prohibit and punish for larceny where the amount stolen is less than twenty dollars ($20.00).

(42) To protect the public schools in said city, and to prohibit and prevent any disturbance thereof in and about the buildings or upon the grounds, and to prevent injury, destruction or defacement of any school property or building.

(43) To establish a board of health and vest it with the necessary power to maintain its object, and to fix fines and penalties for any violation of its lawful orders.

(44) To establish quarantine, and to erect and maintain pest houses and places of detention, and to make and enforce necessary orders for controlling or preventing the spread of infections and contagious diseases, and for abating pestilences.

(45) To prohibit the bringing into the corporate limits by railroads, carriers, persons or in any manner, persons who are paupers or persons who are afflicted with contagious diseases; to punish by fine or imprisonment, or both, any person who shall bring into the corporate limits any such pauper or person afflicted with contagious disease, knowing or having reason to believe, at the time that such person is a pauper or afflicted with such contagious disease, and to collect and recover from any such railroad company, carrier, or other person, the expense of keeping and maintaining such pauper or diseased person, until such person can be lawfully removed from the corporate limits.

(46) To provide for the poor of the municipality, and to that end, the municipality may contract with the county commission of Raleigh County for the keeping of such poor person, or any number of them, at the county poor house, at a price and on such terms as may be agreed upon between the county commission and the proper municipal authorities.

(47) To authorize the taking up and providing for the maintenance and safe keeping of (for such period as may be deemed expedient) all children within said city who are destitute of proper parental and other care.

(48) To arrest, convict and punish any person for cruelty, unnecessary or needless beating, torturing, mutilating, killing or over-

loading, or overdriving, or wilfully depriving of necessary sustenance, any horse or other domestic animal.

(49) To regulate the hitching of horses within the corporate limits, and the driving of cows and cattle through, upon and along the streets and alleys of the said city.

(50) To prohibit, prevent and punish for the pollution of any stream of water running into or through the said municipality; and to prohibit and prevent the throwing into any such stream of any trash, dirt, filth, offal, decayed substances or matters, or anything that would make said water unhealthy or unfit for domestic use.

(51) To prohibit, prevent and punish for any desecration of the Sabbath day; prohibit the playing of any game, exhibiting any show, theater, picture show, and the keeping open of business places except hotels, eating houses, boardinghouses and restaurants.

(52) To restrain, prevent and punish fraudulent practices of any kind or character within the municipality.

(53) To arrest, convict and punish any person for gambling or keeping any gaming table, commonly called "faro bank", or table and chips used in playing such game; crap, crap table, chips or dice used in playing such game; or roulette or the wheel, chips, or other equipment used in playing such game; or keno table or table of like kind or device used in playing the same; or table of like kind under any denomination, whether the game or games be played with cards, dice or otherwise on which anything is bet or wagered, whether the same be played in any public or private room or residence; and may convict and punish any person who shall be a partner or concerned in interest in the keeping of any such gambling devices heretofore enumerated, or in any game played, such as is prohibited hereby, or in keeping or maintaining any gambling house or place of gambling for money or anything of value; and shall have the right to destroy such gambling paraphernalia as may be found in use of any such premises; and any officer armed with a warrant for the arrest of any person engaged in any such unlawful game or for the search of any room in which gambling is suspected, or for the seizure of any gambling paraphernalia, shall have the right to break into any building, other than private dwelling house, without notice or demand, and into a private dwelling or room, after demand and refusal to open same, to execute any such warrant.

(54) To retain all felons and persons guilty of offenses against this state or the United States, and deliver them over to the authorities or court having jurisdiction of the offense whereof such persons are accused.

(55) To apprehend and punish any person who, without a state license therefor, is guilty of carrying about his person, within the municipality, any revolver or other pistol, dirk, bowie knife, sling shot, razor, billy, metallic or false knuckle, or any other dangerous or deadly weapons of like kind and character, as provided by Chapter 61 of the Code of West Virginia, or any amendment thereof, and the punishment therefor, whether for the first or other offenses, shall be that now or hereafter prescribed by said chapter for any such person guilty under the misdemeanor clause provided therein.

(56) To regulate the hanging of doors, the construction of stairways and elevators, and require fire escapes in theaters, churches, school buildings, factories and other places deemed necessary by the council.

(57) To establish fire limits and to regulate the construction of buildings, and designate materials to be used in the construction of buildings within such limits.

(58) To regulate the building of fire walls, fire places, chimneys, boilers, smokestacks, stove pipes, and the burning of waste paper, trash or other waste matter, in the corporate limits.

(59) To require any building that, in the opinion of the council, is dangerous, to be re-

paired, altered or removed by the owners thereof, or put in a safe condition, such as the council may approve, at the expense of such owner or occupier, and to provide punishments for failure to comply with any order of the council concerning same.

(60) To regulate the construction and inspection of all new buildings hereafter erected, the alteration and repair of any buildings now or hereafter erected, to require permits to be obtained of the council therefor, and the submission of plans and specifications to the council for its approval; to regulate the limits within which it shall be lawful to erect any steps, porticos, bay windows, awnings, signs, columns, piers, or other projection or structural ornaments of any kind for the houses or buildings on any street or alley.

(61) To provide for the prevention and extinguishing of fires, and for this purpose, the council may equip and govern fire companies, prescribe the powers and duties of such companies and departments, and of the several officers thereof, or may authorize volunteer fire companies, under such rules and regulations as the council may prescribe, and impose on those who fail to obey any lawful command of the officer in charge of any such company, or volunteer company, any penalty which the council is authorized to impose for violation of an ordinance, and to give authority to any such fire officer to direct the pulling down or destruction of any building, fence, wall or other thing, if such officers deem it necessary to prevent the spreading of any fire which is being extinguished under the direction of such officer, and without any liability on the municipality for damages therefor.

(62) To protect the persons and property within the corporate limits and preserve the peace and good order therein, and for this purpose, to appoint, when necessary, a police force and such other officers as may be deemed necessary; and to provide a lockup, jail or other suitable place to confine persons sentenced to imprisonment for violation of the ordinances of said city; provided, however, that the jail of Raleigh County may be used for that purpose, if authorized by the county commission of said county.

(63) To require any person violating any of the ordinances of said city, or any order for which a fine, imprisonment, or both is imposed, to work upon the streets of said city in case of nonpayment of said fine, until the same is paid by such labor, or in case imprisonment is imposed, to work upon the streets of said city during the term of such imprisonment in addition to the payment of such fine, under such regulations as the council may prescribe.

(64) To prescribe the powers, define the duties of the officers appointed under the corporate authority, fix their terms of service and compensation, if not otherwise prescribed by this act, and to require and take from them bonds, when deemed necessary, payable to the City of Beckley, with the sureties, and in such penalties as may be prescribed, conditioned for the faithful discharge of their respective duties.

(65) To make regulations with respect to, and have supervision and control over the erection, removal and relocation of all telephone, telegraph, electric light or other poles within said city, and the extension of wires, lines or poles by any individuals or corporations.

(66) To require the enlarging or extension of any electric light wire, telephone line, gas line, water system, or other public service within said corporate limits, to meet the needs of the inhabitants, when in the opinion of the council, such extension is necessary and justifiable.

(67) To grant and regulate all franchises in, upon, over and under the streets, alleys and public ways of said city, under such restrictions as shall be provided by ordinances and general law; but no exclusive franchise shall be granted by said city council to any individual or corporation; nor

shall any franchise be granted for a longer period than twenty (20) years.

(68) To acquire, erect or authorize or prohibit the erection of gas works, electric light works or water works within the city limits, to prevent injury to such works or the pollution of any gas or water used or intended to be used by the public or by individuals; and to do all things necessary to adequately supply said city and the inhabitants thereof with pure, healthful and wholesome water; and to require any company furnishing gas or electricity for sale or distribution in said city to furnish an adequate supply thereof; to require gas fixtures, electric light wires, telephone wires and all apparatuses used in connection with any of these to be kept in repair and suitable for use, and free from danger, so far as practicable; to use, generate, distribute, sell and control electricity and gas for heat, light and power, and to furnish light for the streets, highways, buildings, stores and other places in and about said city.

Editor's note—Word "and" before "adequate supply" was in original; probably a typographical error intended as "an".

(69) To require any gas company or person furnishing gas for said city or the inhabitants thereof, to put in standard meters for the measurement thereof, and may appoint a competent person to inspect the meters and remove the same if not standard and in good order; to prevent injury to any gas works, electric light works, water system or any gas meter or meters within said municipality.

(70) The council shall have the right to require of any water company or person furnishing water for the use of the inhabitants of said city, for hire, compensation or reward, to obey any order of the council with respect to keeping the reservoir or other source from which said water is furnished, free from filth and in good, clean condition, and may require said water company to properly filter the water distributed for use, and may require said company to put in such lines as may be necessary to pump the said water into the reservoir or other receptacle therefor, without pumping the same into the main distributing lines, or in any other way or manner effecting them; and may fix fines and penalties for any failure on the part of any corporation, company or other person distributing water, to obey any order of the council or any authorized officer of the city respecting the same, or any ordinance that may be enacted by the council relative thereto.

(71) The council shall have the right to provide a sewerage system for said city, and may require the owner of any property abutting upon any street or alley in which a sewer has been laid or placed, to connect a sewer leading from his or her property or lot into any public sewer which is located in such street or alley adjoining the same, and if the owner or occupier of said lot or property fails or refuses so to do, after having been given a reasonable notice, the council may enter upon such lot and construct such sewers, and may levy the actual cost thereof against the lot upon which the same is built and collect such costs from the owner of such lot in the same manner as city or state taxes are collected and as herein provided; in addition thereto, the council may punish by fine, or fine and imprisonment, any person who permits any drainage from his residence or lot to enter upon any street or upon any property after a sewer has been placed in a street or alley adjacent to his property to which he should connect, after notice has been given to him by the council to make such connection.

(72) The council shall have the right to impose fines and penalties for any interference with or destruction of the sewer system or any part thereof in said city, or for the destruction of or damage to any street, alley or sidewalk in said city, or any improper use thereof; it shall have the right to regulate or prevent the use of the sidewalks for bicycles, push carts, sleds, tricycles, roller skates and other things of like character, and to fix fines and penalties for violation of the ordinances respecting same.

(73) To grant by ordinance or resolution permits for the temporary use of such parts of its streets, roads, alleys and public places as the council may deem proper and right to be used in the construction, alteration or repair of buildings located thereon, or for such other purposes as the council may deem proper and right, and under such regulations and for such time as the council may prescribe.

(74) The council may buy, lease and operate either within or without the municipality, stone quarries, crushers and land for said purposes or for the purpose of furnishing a supply of stone or other material suitable for macadamizing or paving the streets, sidewalks and alleys, and improving public property.

(75) Whenever in the opinion of the council it is necessary that any sidewalk be built or repaired, it shall first have a competent engineer fix a grade line for such sidewalk and shall then, by order of the council, name the character of material out of which same is to be built, and fix the width thereof, and shall then give notice, in writing, to the owner or occupier of said lot, if he be found, and if he be not found, by posting a notice thereof upon the said lot and at the front door of the court house of Raleigh County for at least ten (10) days, requiring the construction of said sidewalk in accordance with the requirements of the council, and upon the grade fixed by the said engineer, and if such sidewalk be not built, altered or repaired within twenty (20) days after such notice is first given or posted, the council shall proceed to put in the same under its supervision and control, and shall charge the expense thereof against the property along which the same is being placed, altered or repaired, and shall cause an itemized account of the same to be made up and delivered to such property owner or occupier of such premises, if found, and if he be not found, have the same recorded in the county clerk's office of Raleigh County, and the same shall constitute a lien upon the said lot or property and shall be collected as other taxes are collected; provided, nothing herein contained shall prevent the council from requiring immediate repair of such sidewalks now or hereafter constructed that may become dangerous; and after notice to the property owner along which the same run, the council may make such immediate repairs, if the property owner fails to make same after such notice, and the expense thereof shall be a lien in the manner aforesaid.

(76) To authorize by ordinance such committees or boards, and delegate such authority thereto as may be deemed necessary or advisable by the council; except that the council cannot delegate the authority to impose a lien upon real estate; and to employ such legal counsel on behalf of the city, from time to time, as the city may deem necessary to protect the interests of the city.

(77) To provide for the annual assessment of the taxable property in said city, including dogs kept in said city, and to provide a revenue for the city for municipal purposes and appropriate such revenue to its expenses; provided, nothing herein contained shall require the council to keep in repair and maintain any bridge or bridges within said corporation, now or hereafter owned by the Chesapeake and Ohio Railway Company, but the officers of said city in the preservation of law and order shall have jurisdiction over any such bridges within such corporation; and provided further, that the police regulations as may be ordained by said city, and the right and power to enforce the same shall extend one mile into the State of West Virginia beyond the corporate limits of said city, but not into any other municipal corporation.

(78) The council may, within any prescribed area, prohibit the erection on any street or in any square, of any building, or of any addition to any building, unless the outer walls thereof be made of brick and mortar or other fire-proof material. And the common council may require the removal of any building or addition which shall be hereaf-

ter created contrary to this prohibition, at the expense of the owner or owners thereof.

(79) The council shall keep all roads, streets and alleys within its limits passable and in good repair, and may provide the expenses therefor by a direct taxation, as provided under this charter, or in any other manner authorized by law; and residents of said city who are taxed therein for the purpose of maintaining such streets and alleys shall be exempt from the payment of any county road tax.

(80) In the enforcement of the ordinances, orders, rules, regulations and by-laws of the said city, no fine shall be imposed exceeding one thousand dollars ($1,000.00), and no person shall be imprisoned as aforesaid, exceeding twelve (12) months; provided, that any violation of the liquor laws of this state shall be punished by the fines and penalties therein prescribed; and violations of the road law or automobile laws may be punished by the fines and penalties prescribed by general law, unless different fines and penalties are expressly prescribed by the ordinances of said city. And in all cases where a fine is imposed for an amount exceeding ten dollars ($10.00), or a person be imprisoned, an appeal may be taken from such decision upon the same terms and conditions that appeals are taken from the judgment of a magistrate of this state; and in no case shall a fine of less than ten dollars ($10.00) be imposed where the ordinance prescribes a fine if the defendant requests that such fine be made at least ten dollars ($10.00) for the purpose of appeal.

(81) The council shall have the right to enforce the attendance of its members at all regular meetings and at all special meetings of which such members have notice, and may cause the arrest and punishment by fine or fine and imprisonment, of any such member who refuses to attend and take part in its proceedings.

(82) It shall be the express duty of the council to present charges against any of its members, or any elective officer of the city, who fails to perform, or who does not promptly and diligently perform any duty prescribed by this act, or by any ordinance or resolution of the council, and upon hearing thereof before the council, after notice to such officer, he shall be removed from office by the council, if the charges be found correct.

(83) To carry into effect these enumerated powers and all others by this act or by general law conferred, or which may hereafter be conferred upon the said city or its council, or any of its officers, the said council shall have and possess full authority to make, pass and adopt all needful ordinances, by-laws, orders and resolutions, not repugnant to the constitution of the United States, constitution of West Virginia and laws of this state; and to enforce any and all of such ordinances, by-laws, orders or resolutions, by prescribing for a violation thereof fines and penalties, and imprisonment in either the county jail of Raleigh County, or the city prison, if there be one. Said fines and penalties shall be imposed and recovered, and such imprisonment inflicted and enforced by the judgment of the police judge of said city.

(Election of 8-3-54)

State law reference—General powers of cities, W. Va. Code, § 8-12-5.

Sec. 22. Qualifications, powers and duties of city solicitor.

The city solicitor shall be a member of the Raleigh County bar, in good standing, and a citizen of the City of Beckley; he shall be the legal adviser of and counsel for said city and for all officers thereof in matters relating to their official duties. He shall prepare all ordinances, contracts, bonds and other instruments in writing in which the city is concerned, and no written contract with the city, except bonds given to said city by officials or others, shall take effect until the legality thereof shall have been approved by such city solicitor. He shall attend the council meetings and perform such other duties, from time to time, as the council may require of him.

Sec. 23. Powers and duties of chief of police.

It shall be the duty of the chief of police to preserve order and quiet in said city, and to see that all subordinate police officers faithfully perform their official duties. He shall attend all regular council meetings and be present in the police court, whenever the same shall be in session, and see that all its orders and requirements are properly executed.

In case of the violation of any ordinance of said city in the presence of or within view of the chief of police, or other police officer, the offender may be forthwith apprehended and taken before the police judge, and a complaint under oath, stating such violation, there lodged and filed, and thereupon such offender may be tried and dealt with according to law without summons. The chief of police or any other police officer of said city shall execute within the County of Raleigh any proper process issued by the police judge in proceedings for the enforcement of ordinances; he shall collect, by a levy of execution or otherwise, and duly account for all fines assessed and costs imposed and collected by him in such proceedings. He shall also have the rights and powers within said city in regard to the arrest of persons, the collection of claims and the execution and return of process, that are or may be lawfully exercised by a deputy sheriff within said county; and he and his sureties shall be liable for all fines, penalties and forfeitures for which a constable is liable, and for dereliction of duty in office, to be recovered in the same manner and in the same courts that such fines, penalties and forfeitures are recovered against deputy sheriffs.

In addition to the above duties, the chief of police shall have such other duties as the council may by ordinance prescribe.
(Election of 8-3-54)

Annotation—For a case sustaining trial court's instruction that chief of police had right to arrest, without warrant, persons charged with violation of a speed limit ordinance in his presence, and to confine them in jail until they could be brought before police judge the next day, subject to their right to have a reasonable opportunity to give bond, see Moran v. City of Beckley, 67 F. (2d) 161. Such case also held that it is for the jury to determine whether or not person arrested for a bailable offense was given "reasonable opportunity" to give bail. Such case further held that it was arbitrary and unjust to jail over night persons charged with bailable offense and, next morning, to accept bail in an amount they could give, when the night before he had asked for bail in an amount they could not give.

Sec. 24. Chief of fire department.

The duties of chief of fire department shall be such as the council may, by ordinance, prescribe.

Sec. 25. Powers and duties of city assessor.

It shall be the duty of the city assessor to cooperate with the county assessor to the end that all property within the city, subject to taxation, may be charged upon the land and personal property books, respectively, and proper valuation thereon placed.

Sec. 26. City health officer.

The city health officer shall be a legally qualified physician. His duties shall be such as the council may by ordinances prescribe.
(Election of 8-3-54)

Sec. 27. Streets and roads; when residents exempt from county road tax.

The said city shall construct and maintain its own roads and streets and by reason thereof it shall not be required to pay any district or county road levies for the construction and maintenance of roads outside of the city limits, but this provision shall not be construed to relieve the city from any liability on existing or future county or district bond issues for road purposes.

Sec. 28. Effect of charter with respect to conditions existing in 1927.

All ordinances and resolutions of said city in force at the time of the passage of this act, which are not inconsistent therewith, shall be and remain in full force over the whole boundary of said city as established by this act until the same are amended or repealed by the council of said city, and the officers elected at the last election, in the City of Beckley, shall remain in office until their successors, under this act, are elected and qualified as hereinbefore provided, and after this act takes effect, the present officers of said city shall have jurisdiction over all the territory embraced in the boundary specified in this act, and such

present officers shall then be vested with full power and authority to pass any new ordinances or resolutions under this act that are not inconsistent therewith. Nothing in this act shall be construed or held to in any way affect or impair any of the bonds, obligations or indebtedness of the City of Beckley existing at the time of the passage of this act.

Editor's note—The charter act passed the legislature on April 26, 1927, and took effect ninety (90) days thereafter. This section speaks as of such time.

Sec. 29. Bond issues.

The City of Beckley, by and through its council, may issue and sell its bonds, in the manner, and subject to the limitations and conditions contained in Chapter 14, Acts of the Legislature, 1923.

State law reference—Ch. 14, Acts 1923, is now classified as W. Va. Code, §§ 13-1-1 to 13-1-32; 18-9-2.

Sec. 30. Licenses.

Whenever anything for which a license is required or permitted under the Code of West Virginia be done within said city, the council may require a license therefor, and may impose a reasonable tax thereon for the City of Beckley. (Election of 8-3-54)

Sec. 31. Common council; designation; quorum.

The council of said city shall be officially known as and called the "Common Council of the City of Beckley." A majority of the council shall be necessary to form a quorum for the transaction of business.

Sec. 32. Salaries; officials interested in contracts.

The council may at any time by a two-thirds (⅔) majority of the members elected change the salaries of any appointive or elective officers; but any such changes that affect the salaries of the elective officers shall be effective only as to such officers as are thereafter nominated and elected; provided, however, that no changes shall reduce the compensation to be paid below the minimum fixed by this section. No officer, councilman, agent or employee of said city shall have a voice or be directly or indirectly pecuniarily interested in any contract, sale or purchase for or on behalf of the city, or in the proceeds of any improvement made by or on behalf of the city, nor shall he receive, directly or indirectly, any compensation for his services rendered on behalf of the city, other than herein provided to be paid, nor shall such councilman remain present while any such matters are being voted upon by the council. Salaries shall be paid by the city in monthly installments. (Election of 8-3-54)

Editor's note—The first paragraph, containing specific salaries, has been omitted, except the second sentence thereof, which has been placed at the end of the section.

Code reference—Section 2-2 of the code for specific salary of elected officials.

Sec. 33. City not to incur debt exclusive of bond issues; liability of councilmen for violation.

The council of said city shall not for any purpose, exclusive of bond issues, create any indebtedness against the said city exceeding available revenues of the city for the current fiscal year, and any councilman who shall violate the provisions of this section shall be personally liable therefor and subject to all other penalties prescribed by any statute of this state for so doing; but nothing in this section shall be construed to prevent the council from lawfully issuing orders after the first day of July, to be paid out of the city treasury, provided, such orders do not exceed the available revenues for that fiscal year, based upon the assessments and levies made or to be made for said year, but such orders shall not draw interest.

Sec. 34. Meetings of common council.

The council shall fix the place and time of holding its regular meetings. It may provide for special and adjourned meetings and prescribe rules and regulations not inconsistent with this act for the transaction of business and for its own guidance and government.

Sec. 35. How funds disbursed.

No money shall be paid out of the city treasury unless authorized by an order entered of record in the council journal, signed by the mayor, or other

presiding officers, and the recorder-treasurer, and all warrants drawn upon the city treasury shall be signed by the mayor and recorder-treasurer before payment thereof shall be authorized by any city depository.

Sec. 36. City records as evidence.

A copy or transcript of any records of the police court, purporting to have been attested or certified by the police judge thereof, may be admitted as evidence in any court of this state without any proof of the signature, or of the official character of the person whose name is signed to it; and a copy or transcript of any records of any department of said city, purporting to have been attested or certified by the mayor or recorder-treasurer of said city, may be admitted as evidence in any court of this state without any proof of the signature or of the official character of the person whose name is signed to it, whether the seal of said city be attached thereto or not.

Sec. 37. Oaths and acknowledgments.

The mayor of said city shall have the same power within the city to administer oaths and affirmations as is now vested in a justice of the peace under the Code of West Virginia; and the recorder-treasurer of said city shall have the same power and authority to administer oaths or affirmations and take acknowledgments to deeds and other writings in said city as is now vested in a magistrate under and by virtue of said Code. (Election of 8-3-54)

State law reference—For state law as to authority of magistrate court to administer oaths and take acknowledgments, see W. Va. Code, § 50-2-1.

Sec. 38. Liens for street improvements; filing and indexing.

For the construction of all streets and sidewalks by this city, pursuant to section 8-18-2 of the Code of West Virginia, the lien for such improvements shall exist against the property so improved from the date the construction work actually begins, and the lien of the assessments provided for in section 8-18-10 of the Code of the West Virginia shall relate back to the beginning of such construction work; provided, no lien imposed by the said city on real estate therein except liens for municipal taxes shall continue to exist unless a notice thereof be filed for record in Raleigh County Court Clerk's office within ninety (90) days after the report of the completion of such improvements has been filed before the city council by the city engineer; such notice shall be recorded by said clerk in appropriate record book and indexed together with other liens against real estate; and releases of said liens shall, when discharged, be also recorded and indexed in said clerk's office as other releases.

Sec. 39. Mayor's power to punish for contempt.

The mayor of this city, while discharging his official duties, is hereby vested with the same power to punish for contempt committed in his presence, as is now vested in magistrates of this state.

State law reference—Power of magistrate court to punish for contempt, W. Va. Code, § 50-5-11.

Sec. 40. Prior charter repealed; what state statutes incorporated in this charter; other state laws applicable to city.

Chapter 8 of the Code of West Virginia, and all amendments thereto, in so far as they are not inconsistent with the several provisions of this act, are hereby adopted as a part of this act; and no act of the legislature or existing law of this state, in conflict with the several provisions of this act, shall be applicable to the City of Beckley; and the charter of the City of Beckley passed by the legislature of West Virginia on the fourteenth day of February, 1908, is hereby repealed. Nothing in this act shall be construed to modify, diminish or in anywise change or deprive the public service commission of the State of West Virginia of any of the rights, duties and responsibilities placed upon it under existing public service statutes, all of which are to remain in full force and effect insofar as this charter is concerned, notwithstanding any provisions herein contained.

[The next page is 71]

CHARTER COMPARATIVE TABLE

This original charter, an Act of the Legislature passed on April 26, 1927, is included herein. The following table shows amendments to the charter.

Election Date	Section this Charter
8- 3-54	1—3
	6, 7, 7a
	8
	10
	16—19
	19a
	20, 21
	26
	30, 32
	37

I certify that the foregoing is a true and accurate copy of the current Charter of the City of Beckley that is in effect, having neither been repealed or revoked, as of March 18, 1997.

Date:

3-18-98

Emmett S. Pugh III
Mayor
City of Beckley

[The next page is 81]

Oath of Office

CITY OF BECKLEY

BECKLEY, WEST VIRGINIA

Date: June 30, 2003

I, Emmett S. Pugh III, who was duly elected Mayor of the City of Beckley at an election held on May 27, 2003, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 27, 2003 as Mayor of the City of Beckley for a four year term beginning July 1, 2003, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Mayor of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 30th day of June, ~~19~~ 2003

(SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 30th day of June, ~~19~~ 2003

(SEAL)
CITY of BECKLEY

Oath of Office

CITY OF BECKLEY

BECKLEY, WEST VIRGINIA

Date:

I, Gary R. Sutphin, who was duly appointed Recorder-Treasurer for the City of Beckley by Emmett S. Pugh III, Mayor, effective March 6, 1989, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Recorder-Treasurer for the City of Beckley to the best of my ability and judgment and as required by law.

WITNESS my hand and seal this the 6th day of March, 19 89.

(SEAL)

STATE OF WEST VIRGINIA

COUNTY OF RALEIGH, TO-WIT:

Taken and sworn to before me this 6th day of March, 19 89.

(SEAL)

CITY of BECKLEY

Oath of Office

CITY OF BECKLEY

BECKLEY, WEST VIRGINIA

Date: June 30, 2003

I, Robert R. Rappold, who was duly elected Councilman-at-Large of the City of Beckley at an election held on May 27, 2003, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 2, 2003 as Councilman-at-Large of the City of Beckley for a four year term beginning July 1, 2003, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Councilman-at-Large of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 30th day of June, ~~19~~ 2003

Robert R. Rappold (SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 30th day of June, ~~19~~ 2003

(SEAL)
CITY of BECKLEY
Circuit Judge

Oath of Office

CITY OF BECKLEY

BECKLEY, WEST VIRGINIA

Date: June 30, 2003

I, A. Lee Leftwich, who was duly elected Councilman - Ward V of the City of Beckley at an election held on May 27, 2003, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 2, 2003 as Councilman - Ward V of the City of Beckley for a four year term beginning July 1, 2003, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Councilman - Ward V of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 30th day of June, ~~19~~ 2003

A. Lee Leftwich (SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 30th day of June, ~~19~~ 2003

(SEAL)
CITY of BECKLEY
Circuit Judge

Oath of Office

CITY OF BECKLEY

BECKLEY, WEST VIRGINIA

Date: June 30, 2003

I, Stephen B. Nickell, who was duly elected Councilman - Ward III of the City of Beckley at an election held on May 27, 2003, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 2, 2003 as Councilman - Ward III of the City of Beckley for a four year term beginning July 1, 2003, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Councilman - Ward III of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 30th day of June, 2003

Stephen B. Nickell (SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 30th day of June, 2003

(SEAL)
CITY of BECKLEY
Circuit Judge

Oath of Office

CITY OF BECKLEY

BECKLEY, WEST VIRGINIA

Date: June 30, 2003

I, Howard L. Mollohan, who was duly elected Councilman-at-Large of the City of Beckley at an election held on May 27, 2003, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 2, 2003 as Councilman-at-Large of the City of Beckley for a four year term beginning July 1, 2003, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Councilman-at-Large of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 30th day of June, ~~19~~ 2003

(SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 30th day of June, ~~19~~ 2003

(SEAL)
CITY of BECKLEY
Circuit Judge

Oath of Office

CITY OF BECKLEY

BECKLEY, WEST VIRGINIA

Date: June 30, 2003

I, A. K. Minter, Jr., who was duly elected Councilman - Ward I of the City of Beckley at an election held on May 27, 2003, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 2, 2003 as Councilman - Ward I of the City of Beckley for a four year term beginning July 1, 2003, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Councilman - Ward I of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 30th day of June, 2003

A. K. Minter (SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 30th day of June, 2003

(SEAL)
CITY of BECKLEY
Circuit Judge

Oath of Office

CITY OF BECKLEY

BECKLEY, WEST VIRGINIA

Date: June 30, 2003

I, Tim R. Berry, who was duly elected Councilman - Ward IV of the City of Beckley at an election held on May 27, 2003, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 2, 2003, as Councilman - Ward IV of the City of Beckley for a four year term beginning July 1, 2003, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Councilman - Ward IV of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 30th day of June, ~~19~~ 2003

(SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 30th day of June, ~~19~~ 2003

(SEAL)
CITY of BECKLEY
Circuit Judge

Oath of Office

CITY OF BECKLEY
BECKLEY, WEST VIRGINIA

Date: August 24, 2004

I, Ann W. Worley, who was duly appointed Councilwoman - Ward II for the City of Beckley by Emmett S. Pugh III, Mayor, effective August 24, 2004, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Councilwoman - Ward II for the City of Beckley to the best of my ability and judgment and as required by law.

WITNESS my hand and seal this the 24th day of August, 19 2004

Ann W. Worley (SEAL)

STATE OF WEST VIRGINIA

COUNTY OF RALEIGH, TO-WIT:

Taken and sworn to before me this 24th day of August, 19 2004

(SEAL)

CITY of BECKLEY

The Sanitary Board of said city presented the following request:

"G. C. Hedrick, Mayor and Members of the Common Council of The City of Beckley;

We, the undersigned, appointed by your Honorable Body as Sanitary Board for the City of Beckley, do hereby petition to your Honorable Body to enact ordinances in connection with the Act under which we are operating, setting forth a brief and general description of the works we are to take over, as well as the extensions and improvements that you anticipate.

(a) Set forth in your ordinance the estimated cost of the project.

(b) Taking over the present sewer system by the Sanitary Board.

(c) Direct that revenue bonds of the municipality be issued pursuant to the act creating said Board, being House Bill No. 29, passed, effective from passage May 11th, 1933, and such amount as may be found necessary to pay the cost of the works; also such other provisions as may be necessary in the premises.

G. C. HEDRICK
E. C. MINTER
E. S. PUGH "

SECTION NO. 223: AN ORDINANCE AMENDING PARAGRAPH FIVE OF SECTION 186 OF THE ORDINANCES OF SAID CITY:

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY: That paragraph 5 of Section No. 186 of the ordinances of said city be amended as follows: No person, firm or corporation shall park any motor vehicle or other vehicle on the east side of South Heber Street, but parking shall be allowed parallel with the curb of the west side thereof and within one foot thereof, from Earwood Street to the south end thereof. The same penalties shall be applicable to the violation of this ordinance as are prescribed under sub-section 19 of the Parking Ordinance of this city.

On motion duly made, seconded and carried, the said ordinance is approved and passed to take effect from date of passage.

SECTION No. 224: AN ORDINANCE AMENDING THE PARKING ORDINANCE OF THE CITY OF BECKLEY BY REGULATING THE PARKING OF MOTOR VEHICLES AND OTHER VEHICLES ON THIRD AVENUE:

BE IT ORDANCED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY: That the parking ordinance thereof be amended as follows: No person, firm or corporation shall park any motor vehicle or other vehicle on the west side of Third Avenue between Neville Street and a point opposite the Dunn Feed Store building; that parking is allowed for thirty minutes on the west side of said Third Avenue from a point opposite the Dunn Feed Store building to a point opposite the mouth of Second Street, but there shall be a driveway left for vehicles at each

SECTION NO. 227: AN ORDINANCE CREATING A SEWAGE UTILITH TO BE KNOWN AS SMOKELESS COAL CAPITAL SEWAGE SYSTEM, and providing for the taking over of the present sewerage system in the City of Beckley, Raleigh County, West Virginia, and the operation of the same as a Public Service, or Public Utility Company, to be municipally owned and controlled providing for replacements, betterments, improvements and extensions, including garbage disposal and if and when found necessary, the erection of the sewage treatment works; under and by the direction of the Sanitary Board hereinbefore created and named as the Sanitary Board of said City.

WHEREAS, it is necessary for the preservation of the public health and for compliance with orders of the State Board of Health, that a sewage system, and/or said sewage treatment works, and/or garbage disposal be provided, properly maintained, operated and controlled, and

WHEREAS, Funds for the maintenance, operation and control of said sewerage system and sewage treatment works and garbage disposal system will not be available from the current operating revenue of the City, and

WHEREAS, The Legislature of the State of West Virginia, in its extraordinary session 1933, known as House Bill No. 29, enacted the law authorizing and empowering municipal corporations, and/or sanitary districts, to construct, own, equip, operate, maintain and improve works for the collection, and/or treatment, purification and disposal of sewage, authorizing the municipality to enter a charge against owners of premises for the use of such works, and to provide for the collection of same; also authorizing municipal corporations and/or sanitary districts to issue revenue bonds payable solely from the revenue of such works and make such bonds exempt from taxation; to authorize contracts for the use of such works by other municipal corporations and political sub-divisions, and charges against owners of premises therein served thereby and a lien against such premises.

THEREFORE, be it ordained by the Council of the City of Beckley, Raleigh County, West Virginia:

Section 1. That the Sewerage System of Beckley, West Virginia, be and is hereby converted into a Public Utility, municipally owned by said City of Beckley, Raleigh County, West Virginia, and to be known and hereby named "SMOKELESS COAL CAPITAL SEWAGE SYSTEM", and the Sanitary Board of said city is hereby authorized and directed to manage and control the said sewerage system, and all additions, replacements, betterments and extensions as hereinafter provided, in a safe and economical manner, maintaining and extending such service to its citizenship as fully and completely as conditions will permit, however, in full compliance with the Act of the Legislature of West Virginia providing for such.

Section 2. It is also ordered and decreed that such replacements, betterments, extensions, improvements, additions be made to the present system as may be found necessary, consistent to safe and economical management, including if found necessary and advisable, a sewage disposal or treatment plant and garbage disposal system.

Section 3. That the Sanitary Board is hereby authorized and directed to make such by-Laws and regulations as may be deemed necessary for the safe, economical and efficient management and protection of the sewerage system, and/or sewage treatment works, and/or garbage disposal system, and for the construction and use of house sewers and connections to the sewerage system; that such by-laws and regulations shall have the same force and effect as ordinances when not repugnant thereto nor to the constitution or laws of the State, or the Act creating the same.

In compliance with the Act empowering the Council to create this Utility and agreeable to the Sanitary Board's request, we submit the following estimates of the cost of the things proposed to be done:

(a) Extensions to the present system so as to more effectively serve the present and future needs of its citizenry, three (3) miles of lines and connections of various sizes. Estimated cost of ($30,000.00) Thirty Thousand Dollars.

(b) To extend the sewer line ending just below what is known as Beckley Junction three and six tenths (3.6) miles down Whitestick and Piney Creeks, ending about one mile below Raleigh, West Virginia, said line to be of sufficient size to amply accommodate the sewage collection from the various lines serving the water shed of that section of the City, with future anticipations, including all necessary "manholes", at an estimated cost of Sixty Thousand ($60,000.00) Dollars.

(c) Connect all lines extending in direction of the main provided in (b) to said main, requiring about two (2) miles of line of various sizes and including the placing of additional "manholes" that may be needed, at an estimated cost of Ten Thousand ($10,000.00) Dollars.

(d) To erect, if found necessary, a sewage disposal plant, or sewage treatment works, at an estimated cost of Thirty Thousand ($30,000.00) Dollars.

(e) To establish and maintain a garbage disposal system, including trucks, other equipment, garages and other things necessary for operating such system, at an estimated cost of Ten Thousand ($10,000.00) Dollars.

(f) Also to provide over-head expenses, such as engineering, attorney fees, books, stationery, and all the expenses incident and necessary in connection with the taking over, extending and developing the said sewerage system, at an estimated cost of Twenty Thousand ($20,000.00) Dollars.

BE IT FURTHER ORDAINED and decreed by the said Council of the City of Beckley, West Virginia, that revenue bonds of this municipality be issued pursuant to Act of the Legislature of West Virginia, enabling the creation of the sewerage system, as herein set out; be issued not in excess of the amount of Two Hundred Thousand ($200,000.00) Dollars, as may be found necessary and convenient to pay the costs thereof as herein provided, and on such time and at such rate of interest as may be found expedient.

ALSO BE IT FURTHER ORDAINED, that the said Council of the City of Beckley, West Virginia, pass immediately a supporting ordinance to the ordinance providing a sewer rental fixing a charge against owners of premises for the use of said system, or works, with methods of collecting for a sufficient amount to maintain said "Smokeless Coal Capital Sewage System" herein and hereby established, including all costs in connection therewith, and to provide for the payment of interest and retirement of any and all bonds issued hereunder.

Upon motion, duly made, seconded and carried the foregoing was proposed as an ordinance of said city, to be finally voted upon by the Common Council of said city at its regular meeting on the 12th day of September, 1933.

SECTION NO. 228: AN ORDINANCE TO PROVIDE FUNDS FOR THE MAINTENANCE, OPERATION AND CONTROL OF THE SEWERAGE SYSTEM AND SEWERAGE TREATMENT WORKS AND GARBAGE DISPOSAL SYSTEM FOR THE CITY OF BECKLEY, RALEIGH COUNTY, WEST VIRGINIA.

WHEREAS, The City of Beckley has an inadequate sewerage system and desires to extend, develop and rebuild said system so as to more adequately meet the demands of the City, and if found necessary to install a sewage treatment works, and establish a garbage disposal system, and

WHEREAS, it is necessary for the preservation of the public health and for compliance with orders of the State Department of Health, that said sewerage system and sewerage treatment works, if found necessary, be properly installed, maintained, operated and controlled, and

WHEREAS, Funds for the maintenance, operation and control of said sewerage system and said sewerage treatment works and a garbage disposal system will not be available from the current operating revenue of the City, and

WHEREAS, The Legislature of the State of West Virginia has enacted a law authorizing municipalities, corporations, sanitary districts to construct, own, operate, maintain and

improve works for the collection and/or treatment, purification and disposal of sewage; and empowering said municipalities to fix charges against owners of premises for the use of such works, and to provide for the collection of same;also authorizing municipal corporations and/or sanitary districts to issue revenue bonds payable solely from the revenues of such works and to do other things necessary in carrying out the purpose of said Act, which Act is known as House Bill No. 29, passed by the Legislature May 11th, 1933, effective from passage and approved by Governor Kump.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY, STATE OF WEST VIRGINIA:

Section 1. That a Sewerage Commission is hereby created in compliance with said Act to consist of three (3) members as provided by said Act, and they are hereby authorized and directed to build, extend and relay the said sewerage system of Beckley and to build such sewerage disposal or sewage treatment plants that may be necessary, and to create and operate a garbage disposal system and to manage and control said sewerage system and said sewage system and said sewage treatment works, if such are created, and said garbage system, in an economical and efficient manner.

Section 2. That the Sanitary Commission be, and is hereby authorized and directed to make such by-laws and regulations as may be deemed necessary for the safe, economical and efficient management and protection of the sewerage system, and sewage treatment works, garbage disposal dystem, and for the construction and use of house sewers and connections to the sewage system; that such by-laws and regulations shall have the same force and effect as ordinances when not repugnant thereto nor to the constitution or laws of the State, or the Act under which said system is to be operated.

Section 3. That the terms and conditions upon which the owners of lots and lands within the corporate limits of the City of Beckley, may connect to the sewage system either directly or indirectly, shall be as follows:

Article 1. Charges shall be paid at the office of the Treasurer and for each calendar year, or part thereof they shall be in accordance with the following schedule of rates:

DWELLINGS AND APARTMENTS:
One-family (one connection) $4.00 per annum.
Two-family (one connection) $7.50 per annum.
Two-family (two connections) $8.00 per annum.
Four-family (two connections) $15.00 per annum.
Others (for each family) $4.00 per annum.
For each additional family on same connection $3.75 per annum.

HOTELS:
For each room with bath $1.75 per annum.
For each room without bath $1.00 per annum.

ROOMING HOUSES AND CLUBS:
Four dollars ($4.00) per annum plus One Dollar ($1.00) per annum for each person renting a room therein.

STORES, RESTAURANTS, OFFICES AND MERCANTILE ESTABLISHMENTS:
Private toilets, each $4.00 per annum.
Public toilets, each $8.00 per annum.
Kitchen sinks, each $4.00 per annum.
Slop sinks, each$2.00 per annum.

FACTORIES AND SHOPS:
For each and every person employed or engaged in services on the premises, in accordance with the following schedule:
Ten persons or less, each $1.00 per annum.
More than ten and not over 25, 90¢ per annum.
More than 25 and not over 50, 80 cents per annum.
More than fifty and not over 100, 70 cents per annum.
All over 100, 60 cents per annum.

CHURCHES:
For each toilet $2.00 per annum.

SCHOOLS AND COLLEGES:
All schools, college buildings and dormitories not subject to taxation shall be grouped and the sewer rental fixed on a per capita student population:
For each registered student 75 cents per annum.

HOSPITALS AND SANITARIUMS:
Beckley Hospital $100.00 per annum.
Raleigh General Hospital $75.00 per annum.

MISCELLANEOUS:
For special cases which are not clearly defined in the above schedule, rates shall be established by Council upon the recommendation of the Sanitary Board.

Article 2. Charges shall become due and payable in advance on the first day of January, April, July and October. All bills not paid by the fifteenth of the month in which same becomes due shall be subject to a ten per cent penalty.

Article 3. Charges shall constitute a lien upon the property served by such connections, and if not paid within ninety days, shall be collected in the same manner as other city taxes.

Article 4. Charges for discharging industrial wastes into the sewerage system shall be fixed by the Sanitary Board and approved by the Council.

Section 4. That the funds received from the use of sewers shall be deposited with the Treasurer of the City and monies so deposited shall be kept in a separate and distinct

fund and shall be known as SEWER RENTAL FUND. When appropriated by the Council it shall be a object to the order of the Sanitary Board, through the Mayor, who is ex-officio chairman of the Sanitary Board, who shall sign all orders drawn on the Treasury of the City against such fund.

Section 5. Funds received from the use of sewers shall be used for the payment of the costs and expenses of the management, maintenance, operation and repair of the sewerage system, sewage treatment works, garbage disposal system, and for the payment of interest and retirement of the principal and interest on any outstanding bonds issued in connection with the system, and any surplus in such fund shall be used for the enlargement or replacement of the same or for the retirement of any debts, bonded or otherwise incurred for the construction of such sewerage system, sewage treatment works, garbage disposal system, or for the creation of a Sinking Fund for the payment of such debts, but shall not be used for the extension of the sewerage system to serve unsewered areas nor for any other purpose whatsoever.

Section 6. That this ordinance constitutes a part of an emergency measure and shall take effect and be in force from and after its passage, subject to change or amendment when deemed necessary.

Upon motion duly made, seconded and carried the foregoing was proposed as an ordinance of said city to be finally voted upon by the Common Council of said city at its regular meeting on the 12th day of September, 1933.

There being no further business to come before the meeting, upon motion duly made and seconded, it was adjourned.

MAYOR

RECORDER-TREASURER

Oath of Office

CITY OF BECKLEY

BECKLEY, WEST VIRGINIA

Date: June 30, 2003

I, Emmett S. Pugh III, who was duly elected Mayor of the City of Beckley at an election held on May 27, 2003, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 2, 2003 as Mayor of the City of Beckley for a four year term beginning July 1, 2003, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Mayor of the City of Beckley to the best of my ability and judgement and as required by law.

WITNESS my hand and seal this the 30th day of June, ~~19~~ 2003

(SEAL)

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, TO-WIT:

Taken, subscribed and sworn to before me this the 30th day of June, ~~19~~ 2003

(SEAL)
CITY of BECKLEY

Oath of Office

CITY OF BECKLEY
BECKLEY, WEST VIRGINIA

Date: July 1, 2004

I, Thomas Keyser, who was duly appointed Member of the Sanitary Board for the City of Beckley by Emmett S. Pugh III, Mayor, effective July 1, 2004, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Member of the Sanitary Board for the City of Beckley to the best of my ability and judgment and as required by law.

WITNESS my hand and seal this the 1st day of July, ~~19~~ 2004

(SEAL)

STATE OF WEST VIRGINIA

COUNTY OF RALEIGH, TO-WIT:

Taken and sworn to before me this 1st day of July, ~~19~~ 2004

(SEAL)

CITY of BECKLEY

Oath of Office

CITY OF BECKLEY
BECKLEY, WEST VIRGINIA

Date: July 1, 2002

I, John M. Sadowski, who was duly appointed Member of the Sanitary Board for the City of Beckley by Emmett S. Pugh III, Mayor, effective July 1, 2002, do hereby solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of Member of the Sanitary Board for the City of Beckley to the best of my ability and judgment and as required by law.

WITNESS my hand and seal this the 1st day of July, 19 2002

(SEAL)

STATE OF WEST VIRGINIA

COUNTY OF RALEIGH, TO-WIT:

Taken and sworn to before me this 1st day of July, 19 2002

(SEAL)

CITY of BECKLEY

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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 24th day of September, 2004.

CASE NO. 03-1770-S-CN (REOPENED)

CITY OF BECKLEY SANITARY BOARD
Petition to reopen (filed 9/7/04).

COMMISSION ORDER

A Recommended Decision was entered in this case on May 14, 2004 (Final June 3, 2004), granting the City of Beckley Sanitary Board's (Beckley) application for a certificate of convenience and necessity to replace its Piney Creek interceptor upon specified contingencies. The proposed financing was also approved and consisted of the following: a $1,000,000 United States Army Corps of Engineers (USACE) grant; the use of $762,503 in local funds; and $8,039,000 financed by a State Revolving Fund (SRF) loan for 20 years at 2% interest and a 1% administrative fee. Beckley was ordered to seek Commission approval of any substantive changes in the engineering plans, project scope or changes in the terms of the proposed financing.

On September 7, 2004, Beckley filed a petition to reopen this case for approval of a modification to the approved funding arrangement. Beckley requested that an Order be entered by September 24, 2004, given the Bond Closing which is scheduled for September 28, 2004.[1] In support of its request, Beckley explained that the approved funding package was based on construction cost estimates made before the bids were opened on the first three contracts. Given the received bids, the actual construction costs will be greater than originally estimated. The modifications for which Beckley seeks approval were explained as follows:

[1]Beckley noted that the Clean Water State Revolving Fund funds are appropriated for the current federal fiscal year which ends September 30, 2004. Accordingly, the Bond Closing must occur prior thereto.

> In order not to delay construction, the Project is now to be divided into four separate contracts. The grant from USACE will be applied toward the fourth contract, consisting of work to complete the final portion of the line. Matching local funds up to $333,000 will be applied to the fourth contract as necessary. The total construction cost of the fourth contract is expected to be $1,161,174, for a total cost of the fourth contract of $1,333,000.
>
> The total construction cost of the first three contracts is expected to be $8,441,061, for a total cost of $9,801,503. These contracts will be funded with the SRF loan and local funds. The original SRF loan commitment for the Project was for $9,039,000. Before bids were received, Beckley believed that it would only need to borrow $8,039,000 from SRF. Because the actual costs have come in higher than expected, it is now necessary for Beckley to borrow $9,039,000 from SRF, the full amount of SRF's original loan commitment. The remaining costs associated with the first three contracts will be funded with up to $762,503 in local funds.
>
> In summary, the total Project cost will be $11,134,503 (an increase of $1,333,000 over the original estimate). This will be funded through a grant from the USACE of $1,000,000, a contribution of local funds in the amount of $1,095,503 (an increase of $333,000 over the original estimate), and a loan from the Clean Water State Revolving Fund ("SRF") in the amount of $9,039,000 (an increase of $1,000,000 over the original estimate). . . .

On September 22, 2004, Commission Staff (Staff) filed an "Initial and Final Joint Staff Memorandum Regarding Petition to Reopen." Staff opined that no additional rate increase will be needed. Staff's cash flow analysis, attached to its original approval recommendation, was based on a worst case scenario in which Beckley would be required to borrow the full $9,039,000 as committed by the SRF. Consequently, the cash flow analysis will remain unchanged and the proposed rate increase is sufficient to cover the additional principal and interest payments, the 1% administrative fee, as well as the debt service reserve fund, associated with project financing. Further, Staff indicated the additional construction costs are adequately covered without a rate adjustment with the $333,000 in local funds. Thus, Staff recommended the petition to reopen be granted and the revised financing approved.

DISCUSSION

Upon review of all of the foregoing, the Commission agrees with the Staff recommendations and will approve the requested revised financing. Approval should be granted for the following revised financing: a $1,000,000 USACE grant, a $1,095,503 contribution of local funds (an increase of $333,000 over the original estimate), and a $9,039,000 Clean Water State Revolving Fund loan (an increase of $1,000,000 over the original estimate).

FINDINGS OF FACT

1. A Recommended Decision was entered on May 14, 2004 (Final June 3, 2004), granting Beckley's application for a certificate of convenience and necessity to replace its Piney Creek interceptor upon specified contingencies. The proposed financing was also approved and consisted of the following: $1,000,000 United States Army Corps of Engineers grant; the use of $762,503 in local funds; and $8,039,000 financed by a State Revolving Fund (SRF) loan for 20 years at 2% interest and a 1% administrative fee.

2. On September 7, 2004, Beckley filed a petition to reopen this case for approval of a modification to the approved funding arrangement because the actual construction costs will be greater than originally estimated. The modifications for which Beckley seeks approval were explained in detail.

3. On September 22, 2004, Staff recommended the petition to reopen be granted and the revised financing approved. Staff indicated that no additional rate increase will be needed.

CONCLUSION OF LAW

Beckley's petition for revised funding should be granted, consisting of a $1,000,000 USACE grant, a $1,095,503 contribution of local funds (an increase of $333,000 over the original estimate), and a $9,039,000 Clean Water State Revolving Fund loan (an increase of $1,000,000 over the original estimate).

ORDER

IT IS, THEREFORE, ORDERED that the petition to reopen filed by the City of Beckley Sanitary Board on September 7, 2004, is hereby granted.

IT IS FURTHER ORDERED that the City of Beckley Sanitary Board's petition for revised financing, consisting of a $1,000,000 United States Army Corps of Engineers grant, a $1,095,503 contribution of local funds, and a $9,039,000 Clean Water State Revolving Fund loan, is hereby approved.

IT IS FURTHER ORDERED that in the event of any change to the funding, terms of financing, plans, or scope of the approved project, the City of Beckley Sanitary Board shall petition the Commission to reopen this proceeding for approval of the same.

IT IS FURTHER ORDERED that upon entry of this order, this case shall be removed from the Commission's docket of active cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by facsimile and United States First Class Mail and upon Commission Staff by hand delivery.

TBS/sek
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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: May 14, 2004

CASE NO. 03-1770-S-CN

CITY OF BECKLEY SANITARY BOARD
301 South Heber Street
Beckley, Raleigh County.
Application for a certificate of convenience and necessity to replace approximately six miles of the Piney Creek interceptor to reduce inflow and infiltration and to relieve hydraulic overloading.

FINAL
6/3/04

RECOMMENDED DECISION

In Case Nos. 01-1258-S-C and 02-0431-S-C, the Commission ordered the City of Beckley Sanitary Board (Utility) to replace its Piney Creek interceptor to relieve hydraulic overloading on its system and to prevent repeated sewage overflows in the Mabscott area. The Commission ordered the Utility to file its certificate application by September 2, 2003, and ordered the Utility to complete construction of its project by September 1, 2005. The Commission found that the need for the Utility to replace the interceptor had already been established. Further, the Commission found that financing the project through the State Revolving Fund (SRF) was reasonable and appropriate.[1]

On October 24, 2003, the Utility filed its certificate application for the project. The project is estimated to cost approximately $9,801,503.

On November 17, 2003, the Utility filed an affidavit of publication indicating that it properly published the notice of filing on November 6, 2003. There were no public protests filed pursuant to the notice.

On December 9, 2003, the Commission referred the matter requiring a decision on or before May 21, 2004.

By Procedural Order issued February 18, 2004, the matter was set for hearing to determine the status of project financing. The parties

[1]See Recommended Decision in Case Numbers 01-1258-S-C and 02-0431-S-C, entered September 6, 2002, and Commission Order entered November 22, 2002.

were ordered to alert the Commission to any other possible problems with the project moving forward in an expedited manner.

On March 2, 2004, the Utility filed affidavits indicating that the Utility properly complied with the notice provisions of the Commission rules as required by 150 C.S.R. 2.22.1.c.4.

On March 5, 2004, the hearing was held as scheduled. At the hearing, the Utility filed a letter from the SRF indicting its intent to loan the $9,039,000 which was then estimated to be the project cost. Staff, at the hearing, indicated that it would be able to prepare its final recommendation in about one month.

By Procedural Order issued March 5, 2004, the matter was set for a second hearing to be held on April 16, 2004.

On April 14, 2004, Staff issued a recommendation indicating that the Utility's proposed rates were sufficient to cover the additional principle and interest payments associated with the SRF financing of the project. Staff indicated that the Utility's proposed rates would produce a cash flow surplus of $75,560 and debt service coverage of 119.45%, which meets bond coverage requirements. Financial Staff recommended that the Commission approve the certificate application and the related financing.

The hearing was held as scheduled. Cecelia Gail Jarrell, Esquire, appeared on behalf of Staff. John Philip Melick, Esquire, and Mark W. Matkovich, Esquire, both appeared on behalf of the Utility. The parties waived their right to file briefs or post-hearing memoranda of law.

EVIDENCE

At hearing, the Utility announced that it had received a $1,000,000 grant from the U.S. Army Corps of Engineers (USAC) for the project. (Tr. 7; City Ex. 2). The Utility has nothing official from USAC, but did present a press release from Congressman Rahall's Office indicating that the award had been granted. (Tr. 13; City Ex. 2). The Utility has obtained an oral confirmation from USAC that the grant money is forthcoming. (Tr. 14). Any grant monies received will be used for financing the project and reducing the SRF debt. (Tr. 14). The City intends to inform the SRF that it may not need the entire amount of the loan after the bids are completed. (Tr. 17).

The project will replace the entire Piney Creek interceptor from the treatment plant for more than five and one-half miles. (Tr. 24). The replacement is designed to eliminate any intentional points of discharge or overflow on the system. (Tr. 32). The new interceptor is designed to handle 14 million gallons of flow per day (MGD). The 14 MGD capacity extends two miles upstream from the treatment plant. (Tr. 32). The system is designed with hydraulic capacity of 7 MGD from the intersection with the Fayette Street interceptor through Mabscott. (Tr. 32). The new line will be able to handle between

three and five times more flow than the best portions of the current line. (Tr. 36).

The estimated project costs are accurate estimates based on sound engineering practices. (Tr. 33). The project plans have been preliminarily reviewed by the Department of Environmental Protection (DEP) and are ready for final approval once all the rights-of-way have been obtained. (Tr. 34). The Utility has come to terms with the railroad on the cost of the crossings necessary for the new interceptor. (Tr. 35). The interceptor handles 70% to 80% of the flow coming into the treatment plant and the City designed it for a 50 to 60-year lifespan. (Tr. 42). The interceptor is designed to handle the same capacity as the treatment plant. (Tr. 42, 43). The Utility's engineer believed that this design was the most beneficial, hydraulically efficient and cost-effective replacement possible. (Tr. 47). The replacement will result in a "monumental" improvement in the quality of service provided by the Utility in the Mabscott area. (Tr. 48).

The design goal of the project was to eliminate the surcharging. The system's design would have handled the record rainfall of 60 inches per year experienced by the area last year. (Tr. 49, 50). There is no guarantee that there will not be even more rainfall next year or that some other problem will create some sort of overflow. (Tr. 49, 50).

The Utility is taking actions to prevent the interceptor from floating in flood conditions. (Tr. 60). These provisions include using riprap and making efforts to tie the line down. (Tr. 60, 61).

Staff recommended that the Utility continue to aggressively pursue its inflow and infiltration problems. (Tr. 67). Staff believes that the line is "sufficiently sized." (Tr. 69).

FINDINGS OF FACT

1. The Commission required the Utility to file this application in order to replace the Utility's Piney Creek interceptor which was determined by the Commission to be in need of replacement and to be causing severe quality of service problems to the Utility's customers in the Mabscott area. (See Case Nos. 01-1258-S-C and 02-0431-S-C).

2. The current project cost is estimated at $9,801,503. (See filing of February 13, 2004).

3. The project is proposed to be financed with a $1,000,000 grant from USAC, $762,503 in local funds, and the remaining amount in an SRF loan for 20 years at 3%. (Id.).

4. Staff recommended approval of the proposed financing. (See Staff filing of April 14, 2004).[2]

5. The project will replace the entire Piney Creek interceptor. (Tr. 24).

6. The new interceptor is designed to eliminate any intentional points of discharge on the system. (Tr. 32).

7. For the first two miles from the treatment plant, the interceptor will have a 14 MGD capacity. (Tr. 32).

8. The remaining portion of the line will have a 7 MGD capacity. (Tr. 32).

9. The new line is designed to handle between three and five times the flow of the best portions of the existing interceptor. (Tr. 36).

10. Staff believes the new line is "sufficiently sized." (Tr. 69).

11. The plans and specifications for this project have been preliminarily approved by the DEP which will issue final approval when all right-of-way agreements have been obtained. (Tr. 34).

12. The new line is designed to transport the same capacity as the treatment plant is capable of treating. (Tr. 42, 43).

13. The new line is designed to last 50 to 60 years. (Tr. 42).

14. The Utility's engineer stated that the design was the most beneficial, hydraulically efficient and cost-effective replacement possible. (Tr. 47).

15. The replacement of this line will result in a significant improvement in the quality of service provided by the Utility in the Mabscott area. (Tr. 48).

16. The new line as designed would have handled the record rainfall of 60 inches which was recently experienced in the area. (Tr. 49, 50).

17. The Utility's rates are sufficient to support the proposed project and related financing and still meet bond coverage requirements. (See Staff filing of April 14, 2004).

18. The plans and specifications for this project are in general conformance to Commission Rules and Regulations.

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[2]At the time of the Staff recommendation, the USAC grant had not been substantiated. The grant only improves the financing.

19. Proper notice of the application was provided by the Utility and no protests were filed. (See affidavits filed November 17, 2003, and March 2, 2004; and file generally).

CONCLUSIONS OF LAW

1. The Commission determined need for this project in Case Nos. 01-1258-S-C and 02-0431-S-C and ordered the Utility to replace the Piney Creek interceptor by September 1, 2005.

2. The Commission determined in Case Nos. 01-1258-S-C and 02-0431-S-C that SRF financing of the project was reasonable and appropriate.

3. The proposed financing package for this project is reasonable and should be approved.

4. The Utility's application for a certificate of convenience and necessity filed on October 24, 2003, to replace its Piney Creek interceptor should be approved.

ORDER

IT IS, THEREFORE, ORDERED that the application filed by the City of Beckley Sanitary Board, on October 24, 2003, for a certificate of convenience and necessity to replace its Piney Creek interceptor be, and hereby is, granted contingent upon final approval of the plans and specifications by the West Virginia Department of Environmental Protection and the receipt by the Utility of all other necessary Federal, State and local permits. The Utility shall forward copies of all permits to the Commission upon receipt of the documents and shall not commence construction until all necessary permits have been issued.

IT IS FURTHER ORDERED that the proposed financing for this project consisting of a $1,000,000 grant from the United States Army Corps of Engineers; the use of $762,503 in local funds, and $8,039,000 financed by an SRF loan for 20 years at 2% interest and a 1% administrative fee, be and hereby is, approved.

IT IS FURTHER ORDERED that if there are any substantive changes in the engineering plans, project scope or changes in the terms of the proposed financing, the Utility shall seek Commission approval of those changes.

IT IS FURTHER ORDERED that the Utility file a certified bid tabulation with the Commission within thirty (30) days of the bid opening date for all contracts associated with the project. The Utility shall also file a copy of the Certificate of Substantial Completion for each contract associated with the project within thirty (30) days of issuance.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served the exceptions.

If no exceptions are filed, this order shall become the order of the Commission, without further action, five (5) days following the expiration of the fifteen (15) day time period, unless it is ordered stayed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's Order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.

K. A. George

Keith A. George
Administrative Law Judge

KAG:dfs
031770ab.wpd

West Virginia Infrastructure & Jobs Development Council

Public Members:
Russell L. Isaacs, Chairman
Cottageville
[illegible]y Harmon, Vice Chairman
[illegible]rricane
Dwight Calhoun
Petersburg
C. R. "Rennie" Hill, III
Beckley

300 Summers Street, Suite 980
Charleston, West Virginia 25301
Telephone: (304) 558-4607
Facsimile: (304) 558-4609

Katy Mallory, PE
Executive Secretary

Katy.Mallory@verizon.net

RECEIVED AUG 11 2003

August 7, 2003

Kenneth Richmond, General Manager
City of Beckley Sanitary Board
P.O. Box 2514
Beckley, West Virginia 25802

Re: City of Beckley Sanitary Board
Sewer Project 2002S-705

Dear Mr. Richmond:

The West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") has reviewed the City of Beckley Sanitary Board's (the "City") revised preliminary application regarding its proposed project to replace approximately 6 miles of the Piney Creek Interceptor Sewer to reduce inflow and infiltration and relieve hydraulic overloading (the "Project").

Based on the findings of the Sewer Technical Review Committee, the Infrastructure Council has determined that the Project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The City should carefully review the enclosed comments of the Sewer Technical Review Committee as the City may need to address certain issues raised in said comments as it proceeds with the Project.

Upon consideration of the revised preliminary application, the Infrastructure Council recommends that the City pursue a Clean Water State Revolving Fund (CWSRF) loan of up to $7,126,130 Please contact the Department of Environmental Protection Office at 558-0641 for specific information on the steps the City needs to follow to apply for these funds. **Please note that this letter <u>does not</u> constitute funding approval from this agency.**

The Infrastructure Council also determined the City, in lieu of the CWSRF loan, may be eligible for an Infrastructure Fund loan of up to $7,126,130. However, the Infrastructure Council's final decision regarding specific funding of the Project is deferred pending the City's readiness to proceed and availability of funds in the Infrastructure Fund. **This letter is not a commitment letter of Infrastructure Funds.** The Project will be placed on the Infrastructure Council's pending list of projects.

The Infrastructure Council also determined the City is eligible to pursue a $3,000,000 U.S. Economic Development Administration and/or Corp of Engineers grant; however, in the interest of time, recommends the above loan sources first in order to get the project to construction faster. Please call the Corp of Engineers office at 529-5644 and the U.S. Economic Development Administration office at 347-5252 for specific information concerning timing and availability of funding from these agencies. **Please note that this letter <u>does not</u> constitute funding approval from these agencies.**

If you have any questions regarding this matter, please contact Katy Mallory at 558-4607.

Sincerely,

Russell L. Isaacs

Enclosure
cc: Mike Johnson, DEP (w/o enclosure)
John Yeager, COE
Region I Planning & Development Council
Robert Belcher, P.E., Chapman Technical Group

SRF-LP-1
(01/12/04)

LOAN AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND LOAN AGREEMENT (the "Loan Agreement"), made and entered into in several counterparts, by and among the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), the WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION (the "DEP"), and the local government designated below (the "Local Government").

CITY OF BECKLEY
(Local Government)

W I T N E S S E T H:

WHEREAS, the United States Congress under Title VI of the federal Clean Water Act, as amended (the "Clean Water Act"), has provided for capitalization grants to be awarded to states for the express purpose of establishing and maintaining state water pollution control revolving funds for the planning, design, construction, acquisition and/or improvement of wastewater treatment facilities;

WHEREAS, pursuant to the provisions of Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a state water pollution control revolving fund program (the "Program") to direct the distribution of loans to particular local governments pursuant to the Clean Water Act;

WHEREAS, under the Act the DEP is designated the instrumentality to enter into capitalization agreements with the United States Environmental Protection Agency ("EPA") to accept capitalization grant awards (U.S. General Services Administration; Catalog of Federal Domestic Assistance, 32nd Edition § 66.458 (1998)) and DEP has been awarded capitalization grants to partially fund the Program;

WHEREAS, under the Act and under the direction of DEP, the Authority has established a permanent perpetual fund known as the "West Virginia Water Pollution Control Revolving Fund" (hereinafter the "Fund");

WHEREAS, pursuant to the Act, the Authority and DEP are empowered to make loans from the Fund to local governments for the acquisition or construction of wastewater treatment projects by such local governments, all subject to such provisions and limitations as are contained in the Clean Water Act and the Act;

WHEREAS, the Local Government constitutes a local government as defined by the Act;

WHEREAS, the Local Government is included on the DEP State Project Priority List and the Intended Use Plan and has met DEP's pre-application requirements for the Program;

WHEREAS, the Local Government is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a wastewater treatment project and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by revenue bonds issued by the Local Government;

WHEREAS, the Local Government intends to construct, is constructing or has constructed such a wastewater treatment project at the location and as more particularly described and set forth in the Application, as hereinafter defined (the "Project");

WHEREAS, the Local Government has completed and filed with the Authority and DEP an Application for a Loan with attachments and exhibits and an Amended Application for a Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and the Fund having available sufficient funds therefor, the Authority and DEP are willing to lend the Local Government the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Local Government with moneys held in the Fund, subject to the Local Government's satisfaction of certain legal and other requirements of the Program.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Local Government, DEP and the Authority hereby agree as follows:

ARTICLE I

Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "fund," "local government," and "project" have the definitions and meanings ascribed to them in the Act or in the SRF Regulations.

1.2 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any successor thereto.

1.3 "Loan" means the loan to be made by the Authority and DEP to the Local Government through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

1.4 "Local Act" means the official action of the Local Government required by Section 4.1 hereof, authorizing the Local Bonds.

1.5 "Local Bonds" means the revenue bonds to be issued by the Local Government pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority with money held in the Fund, all in accordance with the provisions of this Loan Agreement.

1.6 "Local Statute" means the specific provisions of the Code of West Virginia, 1931, as amended, pursuant to which the Local Bonds are issued.

1.7 "Operating Expenses" means the reasonable, proper and necessary costs of operation and maintenance of the System, as hereinafter defined, as should normally and regularly be included as such under generally accepted accounting principles.

1.8 "Program" means the wastewater treatment facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Clean Water Act and administered by DEP.

1.9 "Project" means the wastewater treatment facility project hereinabove referred to, to be constructed or being constructed by the Local Government in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Local Government in whole or in part with the proceeds of bond anticipation notes or other interim financing, which is to be paid in whole or in part with the net proceeds of the Local Bonds.

1.10 "SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

1.11 "System" means the wastewater treatment facility owned by the Local Government, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.12 Additional terms and phrases are defined in this Loan Agreement as they are used.

ARTICLE II

The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Local Government by the Consulting Engineers, the DEP and Authority having found, to the extent applicable, that the Project is consistent with the applicable provisions of the Program.

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and the Local Act, the Local Government has acquired, or shall do all things necessary to acquire, the proposed site of 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 Local Government by the Consulting Engineers.

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Local Government, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property is approved by DEP and the Authority.

2.4 The Local Government agrees that the Authority and DEP and their respective duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Local Government further agrees that the Authority and DEP and their respective duly authorized agents shall, prior to, during and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities

as may be reasonably necessary to accomplish all of the powers and rights of the Authority and DEP with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Local Government shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Local Government shall permit the Authority and DEP, acting by and through their Directors or duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Local Government shall submit to the Authority and DEP such documents and information as it may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Local Government agrees that it will permit the Authority and DEP and their respective agents to have access to the records of the Local Government pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

2.7 The Local Government shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (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 and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Local Government shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and DEP and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Local Government, the Local Government or (at the option of the Local Government) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (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 Local Government, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the

(e) The Local Government shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority and DEP shall have received a certificate of the Consulting Engineers to such effect;

(f) The Local Government shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the West Virginia Infrastructure and Jobs Development Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(g) The Local Government shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(h) The Local Government shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), with all requisite appeal periods having expired without successful appeal, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(i) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority and DEP shall have received a certificate of the accountant for the Local Government, or such other person or firm experienced in the finances of local governments and satisfactory to the Authority and DEP, to such effect; and

(j) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction

and acquisition of the Project as set forth in the Application, and the Authority and DEP shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of wastewater treatment projects and satisfactory to the Authority and DEP, to such effect, such certificate to be in form and substance satisfactory to the Authority and DEP, and evidence satisfactory to the Authority and DEP of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority and DEP, including the SRF Regulations, or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Local Government and the Local Government shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Local Government shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

3.3 The Loan shall be secured and shall be repaid in the manner hereinafter provided in this Loan Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Government by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, DEP and the Local Government. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority or such later date as is agreed to in writing by DEP.

3.5 The Local Government understands and acknowledges that it is one of several local governments which have applied to the Authority and DEP for loans from the Fund to finance wastewater treatment projects and that the obligation of the Authority to make any such loan is subject to the Local Government's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing and to the requirements of the Program. The Local Government specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Fund to purchase all the Local Bonds and that, prior to such purchase, the Authority may purchase the bonds of other local governments set out in the State Project Priority List,

as defined in the SRF Regulations. The Local Government further specifically recognizes that all loans will be originated in conjunction with the SRF Regulations and with the prior approval of DEP.

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions regarding the public release and audit requirements established by federal and State regulations as set forth in Exhibit E attached hereto at such times as are set forth therein.

ARTICLE IV

Local Bonds; Security for Loan; Repayment of Loan; Interest on Loan; Fees and Charges

4.1 The Local Government shall, as one of the conditions of the Authority and DEP to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Local Government in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows:

(a) That the gross revenues of the System shall always be used for purposes of the System. Such gross revenues will be used monthly, in the order of priority listed below:

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

(iv) for other legal purposes of the System, including payment of debt service on other obligations junior, subordinate and inferior to the Local Bonds.

Provided, that if the Local Government has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the net or gross revenues of the System as provided in the Local Act;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the Reserve Account is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount equal to the Reserve Requirement and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Local Government shall complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or the Regulations, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, provided that the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the Local Bonds outstanding and further provided that portions of the System when no longer required

for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

(v) That the Local Government shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the prior written consent of the Authority and DEP; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Local Government will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Local Government will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Local Government under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law and all rights as set forth in Section 5 of the Act;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(x) That, to the extent legally allowable, the Local Government will not grant any franchise to provide any services which would compete with the System;

(xi) That the Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that the Local Government is in compliance with the terms and provisions of the Local Act and this Loan Agreement and that the Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Local Government shall annually adopt a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority and DEP within 30 days of adoption thereof;

(xiii) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(xiv) That the proceeds of the Local Bonds, advanced from time to time, except for accrued interest and capitalized interest, if any, must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Local Government and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing of such Local Government, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and DEP, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Local Government may authorize redemption of the Local Bonds with 30 days written notice to the Authority;

(xvi) That the West Virginia Municipal Bond Commission (the "Commission") shall serve as paying agent for all Local Bonds;

(xvii) That the Local Government shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payment. The Local Government shall complete the Monthly Payment Form, attached hereto as Exhibit F

and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5th day of such calendar month;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Local Government will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Local Government shall have obtained the certificate of the Consulting Engineers to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and DEP 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;

(xx) That the Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Local Government, then the Local Government shall enter into a termination agreement with the water provider; and

(xxi) That the Local Government shall submit all proposed change orders to the DEP for written approval. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule A attached to the certificate of the Consulting Engineer. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

The Local Government hereby represents and warrants that the Local Act has been or shall be duly adopted or enacted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, validity, sale and delivery of the Local Bonds shall be approved without qualification by nationally recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit G.

4.2 The Loan shall be secured by the pledge and assignment by the Local Government, as effected by the Local Act, of the fees, charges and other revenues of the Local Government from the System.

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the DEP monthly as required by the Local Government to pay Costs of the Project, provided, however, if the proceeds of the Local Bonds will be used to repay an interim financing, the proceeds will be advanced on a schedule mutually agreeable to the Local Government, the DEP and the Authority. The Local Bonds shall not bear interest during the construction period but interest shall commence accruing on the completion date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Local Bonds shall be as set forth on Schedule Y hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.4 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Local Government. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

4.5 As provided by the SRF Regulations, the Local Government agrees to pay from time to time, if required by the Authority and DEP, the Local Government's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be determined by the Authority and shall include, without limitation, Program expenses, legal fees paid by the Authority and fees paid to the trustee and paying agents for any bonds or notes to be issued by the Authority for contribution to the Fund and the fees and expenses of any corporate trustee for the Fund.

4.6 The obligation of the Authority to make any loans shall be conditioned upon the availability of moneys in the Fund in such amount and on such terms and conditions as, in the sole judgment of the Authority, will enable it to make the Loan.

ARTICLE V

Certain Covenants of the Local Government; Imposition and Collection of User Charges; Payments To Be Made by Local Government to the Authority

5.1 The Local Government hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this Loan Agreement, the Local Government hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Loan Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to this Loan Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Local Government hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Local Government, the Authority may exercise any or all of the rights and powers granted under Section 5 of the Act, including, without limitation, the right to impose, enforce and collect charges of the System.

ARTICLE VI

Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by the Local Government in the terms and covenants of this Loan Agreement, and

the Local Government hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this Loan Agreement.

6.2 The Local Government hereby warrants and represents that all information provided to the Authority and DEP in this Loan Agreement, in the Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority and DEP shall have the right to cancel all or any of their obligations under this Loan Agreement if (a) any representation made to the Authority and DEP by the Local Government in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Local Government has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the Act, the SRF Regulations or this Loan Agreement.

6.3 The Local Government hereby agrees to repay on or prior to the Date of Loan Closing any moneys due and owing by it to the Authority or any other lender for the planning or design of the Project, provided that such repayment shall not be made from the proceeds of the Loan.

6.4 The Local Government hereby covenants that it will rebate any amounts required by Section 148 of the Internal Revenue Code of 1986, as amended, and will take all steps necessary to make any such rebates. In the event the Local Government fails to make any such rebates as required, then the Local Government shall pay any and all penalties, obtain a waiver from the Internal Revenue Service and take any other actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Local Bonds.

6.5 Notwithstanding Section 6.4, the Authority and DEP may at any time, in their sole discretion, cause the rebate calculations prepared by or on behalf of the Local Government to be monitored or cause the rebate calculations for the Local Government to be prepared, in either case at the expense of the Local Government.

6.6 The Local Government hereby agrees to give the Authority and DEP prior written notice of the issuance by it of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

6.7 The Local Government hereby agrees to file with the Authority and DEP upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule A to the Application, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE VII

Miscellaneous

7.1 Schedules X and Y shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Local Government supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

7.2 If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement, and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.3 This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

7.4 No waiver by any party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

7.5 This Loan Agreement supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Loan and constitutes the entire agreement between the parties hereto in respect thereof.

7.6 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Local Government specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by the Authority.

7.7 This Loan Agreement shall terminate upon the earlier of:

(i) written notice of termination to the Local Government from either the Authority or DEP;

(ii) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by DEP if the Local Government has failed to deliver the Local Bonds to the Authority;

(iii) termination by the Authority and DEP pursuant to Section 6.2 hereof; or

(iv) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Local Government to the Authority or DEP; provided that the amount of the Loan made under this Loan Agreement in any succeeding fiscal year is contingent upon funds being appropriated by the State legislature or otherwise being available to make the Loan. In the event funds are not appropriated or otherwise available to make all of the Loan, the responsibility of the Authority and DEP to make all the Loan is terminated; provided further that the obligation of the Local Government to repay the outstanding amount of the Loan made by the Authority and DEP is not terminated due to such non-funding on any balance of the Loan. The DEP agrees to use its best efforts to have the amount contemplated under this Loan Agreement included in its budget. Non-appropriation or non-funding of the Loan shall not be considered an event of default under this Loan Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

CITY OF BECKLEY
[Name of Local Government]

(SEAL)

By: _____
Its: Mayor
Date: September 16, 2004

Attest:

_____
Its: Recorder

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF WATER AND WASTE MANAGEMENT

By: _____
Its: Director
Date: 9-21-04

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: _____
Its: Director
Date: September 16, 2004

Attest:

Barbara B Meadows
Its: Secretary-Treasurer

000832/00372
01/12/04

EXHIBIT A

FORM OF PERFORMANCE CERTIFICATE

[To Be Provided By DEP]

EXHIBIT B

MONTHLY FINANCIAL REPORT

Name of Local Government _____
Name of Bond Issue(s) _____
Type of Project _____ **Water** _____ **Wastewater**
Fiscal Year _____ **Report Month** _____

Item	Current Month	Total Year To Date	Budget Year To Date	Budget Year To Date Minus Total Year To Date
1. Gross Revenues				
2. Operating Expenses				
3. Bond Payments:				
Type of Issue				
Clean Water SRF				
Drinking Water TRF				
Infrastructure Fund				
Water Development Authority				
Rural Utilities Service				
Economic Development Administration				
Other (Identify)				
4. Renewal and Replacement Fund Deposits				

_____
Name of Person Completing Form

_____
Address

_____
Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

Item 1 — You will need a copy of the current fiscal year budget adopted by the Local Government to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of $1,200 are anticipated to be received for the year, each month the base would be increased by $100 ($1,200/12). This is the incremental amount for the Budget Year-to-Date column.

Item 2 — Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of $900 are anticipated to be incurred for the year, each month the base would be increased by $75 ($900/12). This is the incremental amount for the Budget Year-to-Date column.

Item 3 — Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Local Government according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.

Item 4 — Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are $1,200, then $30 (2.5% of $1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Government.

The Local Government must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.

EXHIBIT C

PAYMENT REQUISITION FORM

(All Copies to Be Provided by DEP for Each Project)

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____
(Issuer)

_____
(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No._____, of _____, Consulting Engineers, _____, _____, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the bond _____ adopted or enacted by the Issuer on _____, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), dated _____.

2. The Bonds are being issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least _____ years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing

set forth in Schedule A attached hereto as Exhibit A, and my firm[1] has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof[2], the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this ____ day of _____, ____.

_____

By _____

West Virginia License No. _____

[SEAL]

---

[1]If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____, Esq.] and delete "my firm has ascertained that".

[2]If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of _____ of even date herewith," at the beginning of (ix).

EXHIBIT E

SPECIAL CONDITIONS

A. PUBLIC RELEASE REQUIREMENT - The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, groundbreaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. AUDIT REQUIREMENT [Supplement to Article IV 4.1 (b) (xi)] - Effective October 1, 2003, the Local Government that receives $500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

C. CLOSING IS CONTINGENT upon receipt of final title opinion and final revised PSC order.

EXHIBIT F

MONTHLY PAYMENT FORM

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: [Name of bond issue]

Ladies and Gentlemen:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Name of Local Government] on [Date].

Sinking Fund:

Interest	$____
Principal	$____
Total:	$____
Reserve Account:	$____

Witness my signature this ___ day of_____.

[Name of Local Government]

By: _____
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

OPINION OF BOND COUNSEL FOR LOCAL GOVERNMENT

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

Ladies and Gentlemen:

We are bond counsel to _____ (the "Local Government"), a _____.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated ____, ____, including all schedules and exhibits attached thereto (the "Loan Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, ____ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of $_____, in the form of one bond, registered as to principal and interest to the Authority, with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning _____ 1, ____, and ending _____ 1, ____, all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond _____ duly adopted or enacted by the Local Government on _____, as supplemented by the supplemental resolution duly adopted by the Local Government on _____

(collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Local Government and is a valid and binding special obligation of the Local Government, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Local Government without the consent of the Authority and the DEP.

3. The Local Government is a duly organized and validly existing _____ _____, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Local Government and constitute valid and binding obligations of the Local Government, enforceable against the Local Government in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Local Government to the Authority and are valid, legally enforceable and binding special obligations of the Local Government, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds $9,039,000
Purchase Price of Local Bonds $9,039,000

The Local Bonds shall bear no interest from the date of delivery to and including May 31, 2006. Commencing September 1, 2006, interest on the Local Bonds is payable quarterly, at a rate of 2% per annum. Commencing September 1, 2006, principal of the Local Bonds is payable quarterly, with an administrative fee of 1%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Government shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

The Local Bonds are fully registered in the name of the Authority as to principal and interest, if any, and the Local Bonds shall grant the Authority a first lien on the net or gross revenues of the Local Government's system as provided in the Local Act.

The Local Government may prepay the Local Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and DEP. The Local Government shall request approval from the Authority and DEP in writing of any proposed debt which will be issued by the Local Government on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Local Government: Sewerage System Refunding Revenue Bonds, Series 1995 A, dated April 1, 1995, issued in the principal amount of $3,095,000 and Sewerage System Revenue Bonds, Series 1998 A, dated March 17, 1998, in the principal amount of $11,000,000.

SCHEDULE Y

$9,039,000

City of Beckley

20 Years, 2% Interest Rate, 1% Administrative Fee

Closing Date: September 28, 2004

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
12/01/2004	-	-	-	-
03/01/2005	-	-	-	-
06/01/2005	-	-	-	-
09/01/2005	-	-	-	-
12/01/2005	-	-	-	-
03/01/2006	-	-	-	-
06/01/2006	-	-	-	-
09/01/2006	92,171.01	2.000%	45,195.00	137,366.01
12/01/2006	92,631.86	2.000%	44,734.14	137,366.00
03/01/2007	93,095.02	2.000%	44,270.99	137,366.01
06/01/2007	93,560.50	2.000%	43,805.51	137,366.01
09/01/2007	94,028.30	2.000%	43,337.71	137,366.01
12/01/2007	94,498.44	2.000%	42,867.57	137,366.01
03/01/2008	94,970.93	2.000%	42,395.07	137,366.00
06/01/2008	95,445.79	2.000%	41,920.22	137,366.01
09/01/2008	95,923.02	2.000%	41,442.99	137,366.01
12/01/2008	96,402.63	2.000%	40,963.38	137,366.01
03/01/2009	96,884.65	2.000%	40,481.36	137,366.01
06/01/2009	97,369.07	2.000%	39,996.94	137,366.01
09/01/2009	97,855.91	2.000%	39,510.09	137,366.00
12/01/2009	98,345.19	2.000%	39,020.81	137,366.00
03/01/2010	98,836.92	2.000%	38,529.09	137,366.01
06/01/2010	99,331.10	2.000%	38,034.90	137,366.00
09/01/2010	99,827.76	2.000%	37,538.25	137,366.01
12/01/2010	100,326.90	2.000%	37,039.11	137,366.01
03/01/2011	100,828.53	2.000%	36,537.48	137,366.01
06/01/2011	101,332.68	2.000%	36,033.33	137,366.01
09/01/2011	101,839.34	2.000%	35,526.67	137,366.01
12/01/2011	102,348.54	2.000%	35,017.47	137,366.01
03/01/2012	102,860.28	2.000%	34,505.73	137,366.01
06/01/2012	103,374.58	2.000%	33,991.43	137,366.01
09/01/2012	103,891.45	2.000%	33,474.56	137,366.01
12/01/2012	104,410.91	2.000%	32,955.10	137,366.01
03/01/2013	104,932.96	2.000%	32,433.04	137,366.00
06/01/2013	105,457.63	2.000%	31,908.38	137,366.01
09/01/2013	105,984.92	2.000%	31,381.09	137,366.01
12/01/2013	106,514.84	2.000%	30,851.17	137,366.01
03/01/2014	107,047.42	2.000%	30,318.59	137,366.01
06/01/2014	107,582.65	2.000%	29,783.35	137,366.00
09/01/2014	108,120.57	2.000%	29,245.44	137,366.01
12/01/2014	108,661.17	2.000%	28,704.84	137,366.01
03/01/2015	109,204.47	2.000%	28,161.53	137,366.00
06/01/2015	109,750.50	2.000%	27,615.51	137,366.01
09/01/2015	110,299.25	2.000%	27,066.76	137,366.01

$9,039,000

City of Beckley
20 Years, 2% Interest Rate, 1% Administrative Fee
Closing Date: September 28, 2004

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
12/01/2015	110,850.75	2.000%	26,515.26	137,366.01
03/01/2016	111,405.00	2.000%	25,961.01	137,366.01
06/01/2016	111,962.02	2.000%	25,403.98	137,366.00
09/01/2016	112,521.83	2.000%	24,844.17	137,366.00
12/01/2016	113,084.44	2.000%	24,281.56	137,366.00
03/01/2017	113,649.87	2.000%	23,716.14	137,366.01
06/01/2017	114,218.12	2.000%	23,147.89	137,366.01
09/01/2017	114,789.21	2.000%	22,576.80	137,366.01
12/01/2017	115,363.15	2.000%	22,002.86	137,366.01
03/01/2018	115,939.97	2.000%	21,426.04	137,366.01
06/01/2018	116,519.67	2.000%	20,846.34	137,366.01
09/01/2018	117,102.27	2.000%	20,263.74	137,366.01
12/01/2018	117,687.78	2.000%	19,678.23	137,366.01
03/01/2019	118,276.22	2.000%	19,089.79	137,366.01
06/01/2019	118,867.60	2.000%	18,498.41	137,366.01
09/01/2019	119,461.94	2.000%	17,904.07	137,366.01
12/01/2019	120,059.25	2.000%	17,306.76	137,366.01
03/01/2020	120,659.54	2.000%	16,706.47	137,366.01
06/01/2020	121,262.84	2.000%	16,103.17	137,366.01
09/01/2020	121,869.15	2.000%	15,496.85	137,366.00
12/01/2020	122,478.50	2.000%	14,887.51	137,366.01
03/01/2021	123,090.89	2.000%	14,275.12	137,366.01
06/01/2021	123,706.35	2.000%	13,659.66	137,366.01
09/01/2021	124,324.88	2.000%	13,041.13	137,366.01
12/01/2021	124,946.50	2.000%	12,419.51	137,366.01
03/01/2022	125,571.23	2.000%	11,794.77	137,366.00
06/01/2022	126,199.09	2.000%	11,166.92	137,366.01
09/01/2022	126,830.09	2.000%	10,535.92	137,366.01
12/01/2022	127,464.24	2.000%	9,901.77	137,366.01
03/01/2023	128,101.56	2.000%	9,264.45	137,366.01
06/01/2023	128,742.07	2.000%	8,623.94	137,366.01
09/01/2023	129,385.78	2.000%	7,980.23	137,366.01
12/01/2023	130,032.70	2.000%	7,333.30	137,366.00
03/01/2024	130,682.87	2.000%	6,683.14	137,366.01
06/01/2024	131,336.28	2.000%	6,029.72	137,366.00
09/01/2024	131,992.96	2.000%	5,373.04	137,366.00
12/01/2024	132,652.93	2.000%	4,713.08	137,366.01
03/01/2025	133,316.19	2.000%	4,049.81	137,366.00
06/01/2025	133,982.77	2.000%	3,383.23	137,366.00
09/01/2025	134,652.69	2.000%	2,713.32	137,366.01
12/01/2025	135,325.95	2.000%	2,040.06	137,366.01
03/01/2026	136,002.58	2.000%	1,363.43	137,366.01
06/01/2026	136,682.59	2.000%	683.41	137,366.00
Total	**$9,039,000.00**	-	**$1,950,280.61**	**$10,989,280.61** *

***Plus $12,189.26 one-percent administrative fee paid quarterly. Total fee paid over life of loan is $975,140.80.**

SRF 9-13-04 | SINGLE PURPOSE | 9/13/2004 | 3:34 PM

FIRST READING
January 13, 2004

SECOND READING
January 27, 2004

AN ORDINANCE SETTING FORTH SEWER RATE CHARGES AND PENALTIES FOR SERVICE TO CUSTOMERS OF THE SEWAGE SYSTEM OF THE CITY OF BECKLEY AND TO AMEND AND REENACT SECTION 9-240 -DELETE SECTIONS 241, 242, 245, 246, 247, AND 248 – DIVISION 3 – RATES AND CHARGES – ARTICLE II – SEWERS AND SEWAGE DISPOSAL – CHAPTER 9 – MUNICIPAL UTILITIES AND SERVICES OF THE CODE OF THE CITY OF BECKLEY

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY that:

1. The findings and recommendations of the Beckley Sanitary Board regarding sewer rate charges for service to customers of the sewage system of the City of Beckley have been received and reviewed by Common Council.

2. Be it further ordained that the following Beckley City Code Sections are hereby revised establishing the following rate structure for the treatment of sewage applicable within the entire territory served:

Sec. 9-240. Schedules for Services inside City.

(a) Initial Rates & Charges. There is established a schedule of just and equitable rates or charges, exclusive of industrial waste or unusual user charges, for the use of, and service rendered by, the municipal sewer system which shall be paid by the owner of each lot, parcel of real estate, or building connected with or using such sewer system which schedule shall be in effect from March 15, 2004 and expire January 27, 2005. Sewer charges, based upon water consumption, shall be as follows:

1) First two thousand (2,000) gallons used per month, $5.98 per 1,000 gallons.

2) Next three thousand (3,000) gallons used per month, $5.61 per 1,000 gallons.

3) Next twenty thousand (20,000) gallons used per month, $5.13 per 1,000 gallons.

4) All over twenty-five thousand (25,000) gallons used per month, $4.60 per 1,000 gallons.

5) Minimum Charge - No bill will be rendered for less than $11.96 per month.

6) Unmetered Users Residential - A flat fee of $25.99 based on 4,500 gallons of water usage per month will be charged for all unmetered customers.

(b) Final Rates & Charges. There is established a schedule of just and equitable rates or charges, exclusive of industrial waste or unusual user charges, for the use of, and service rendered by, the municipal sewer system which shall be paid by the owner of each lot, parcel of real estate, or building connected with or using such sewer system which schedule shall be in effect on and after January 27, 2005. Sewer charges, based upon water consumption, shall be as follows:

1) First two thousand (2,000) gallons used per month, $6.94 per 1,000 gallons.

2) Next three thousand (3,000) gallons used per month, $6.51 per 1,000 gallons.

3) Next twenty thousand (20,000) gallons used per month, $5.95 per 1,000 gallons.

4) All over twenty-five thousand (25,000) gallons used per month, $5.34 per 1,000 gallons.

5) Minimum Charge - No bill will be rendered for less than $13.88 per month.

6) Unmetered Users Residential - A flat fee of $30.16 based on 4,500 gallons of water usage per month will be charged for all unmetered customers.

(c) Multiple Occupancy. In apartment buildings, shopping centers, mobile homes, mobile home courts, or other multiple occupancy situations, each unit shall be required to pay not less than the minimum monthly charge provided above.

(d) Sewer Connection Charges. The sewer connection fee will be three hundred dollars ($300.00), or the actual cost of the connection, if higher than three hundred dollars ($300.00). Such actual cost will include payroll, materials, and machine time.

(e) Classification of Users. All users are to be classified by the Sanitary Board or its duly authorized representative either by assigning each one to the "user classification" category according to the principal activity conducted on the user's premises, by individual user analyzation, or by a combination thereof. The three (3) user classifications shall be:

1) For residential service;

2) For commercial service; and

3) For service to establishments producing industrial wastes.

The purpose of such collective and/or individual classification is to facilitate the regulation of wastewater discharges based on wastewater constituents and characteristics to provide an effective means of source control, and to establish a system of charges and fees which will insure an equitable recovery of Beckley's cost.

(f) Delayed Payment Penalty. On all accounts, not paid in full within twenty (20) days of the billing date, a penalty of ten percent (10%) will be added to the net current sewer amount unpaid.

(g) Rates Outside the City of Beckley. The rates set forth herein shall apply to all users of the municipal sewer system within the City of Beckley, and the rates or charges for all users of the sewers located outside the City whose premises are connected with the interceptor lines of the system, or otherwise, shall be the same as the rates provided herein, unless otherwise provided.

(h) Schedule of Charges for Treatment of Residential Septage, Sludge and Leachate. There is established a rate of five cents ($0.05) per gallon of residential septage, sludge or leachate discharged into the city of Beckley sewer system.

(i) Returned Check Charge. A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of twenty-five dollars ($25.00) shall be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

(j) Reconnection Charge. A twenty-five dollar ($25.00) reconnection fee shall be assessed against each customer for each instance of disconnection of water service for delinquent sewer charges. Water service shall not be restored until all amounts in arrears, including penalties, have been paid.

(k) Leak Adjustment. When a bill reflects unusual water consumption, which can be attributed to eligible leakage on customer's side of meter, a leak adjustment rate of $1.03 per 1,000 gallons of water will be used. This rate shall be applied to all such consumption above the customer's historical average usage.

(l) Security Deposit. A security deposit shall be collected from each applicant or customer equal to one-twelfth ($1/12^{th}$) of the annual estimated charge for residential service and one sixth ($1/6^{th}$) of the annual estimated charges for other users.

(m) Surcharge Formula To Be Applied In The Cases Of Users Producing Unusual Waste. The charge for the treatment of unusual waste will be calculated on the basis of the following formula:

$$Ci=VoVi+BoBi+SoSi$$

Ci = charge to unusual users per year

Vo = average unit cost of transport and treatment chargeable to volume, in dollars per gallon

Vi = volume of wastewater from unusual users in gallons per year

Bo = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD), in dollars per pound

Bi = weight of BOD from unusual users, in pounds per year

So = average unit costs of treatment (including sludge treatment) chargeable to total solids, in dollars per pound

Si = weight of total solids from unusual users, in pounds per year

When an unusual user is to be served, a preliminary study of its wastes, and the costs of transport and treatment thereof, will be made. The total cost of any such study preformed shall be borne entirely by the unusual user. Waste containing materials which, in the judgment of the utility should not be introduced into the sewer system, will not be accepted. The results of the preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefore, based upon the formula set out above.

Thereafter, unusual sewage will be monitored on a regular basis and at the conclusion of each fiscal year, based on the investigation aforesaid and audit of the utility records, new cost figures

will be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the unusual user. Based on these audited figures, additional billings covering the past fiscal year will be made for payment by each unusual user, or refund given by the utility, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment will be made as aforesaid.

(n) Surchage Formula To Be Applied For Permittees Of The Industrial Pretreatment Program For Excessive Conventional Pollutants. The following surcharges shall apply for permittees of the Industrial Pretreatment Program for excessive conventional pollutants:

1. BOD, COD, TSS, and Ammonia:

S.C. = Surcharge in dollars for excess B.O.D. or C.O.D., TSS and Ammonia for the billing period.

$S.C._{(BOD+TSS+NH3)} = V[W(BOD-SCC_{BOD}) + Y(TSS-SCC_{TSS}) + Z(NH3-SCC_{NH3})]$

$S.C._{(COD+TSS+NH3)} = V[X(COD-SCC_{COD})+Y(TSS+SCC_{TSS})+Z(NH3-SCC_{NH3})]$

V = Volume in million gallons (MG) for a specific user billing period

W = Cost to treat BOD per part per million gallons

X = Cost to treat COD per part per million gallons

Y = Cost to treat TSS per part per million gallons

Z = Cost to treat NH_3 per part per million gallons

SCC_{BOD} = The surcharge threshold concentration for BOD (parts per million)(by weight)

SCC_{COD} = The surcharge threshold concentration for COD (parts per million)(by weight)

SCC_{TSS} = The surcharge threshold concentration the TSS (parts per million)(by weight)

SCC_{NH3} = The surcharge threshold concentration for Ammonia (parts per million)(by weight)

BOD = Biological oxygen demand at five (5) days at 20°C as determined by wastewater treatment plant laboratory analysis or user data (parts per million)(by weight)

COD = Chemical oxygen demand as determined by wastewater treatment plant laboratory analysis or user data (parts per million)(by weight)

TSS = Total suspended solids as determined by wastewater treatment plant laboratory analysis or user data (parts per million)(by weight)

NH_3 = Ammonia as determined by wastewater treatment plant laboratory analysis or user data (parts per million)(by weight)

2. Oils and Grease: The permittee shall pay for the cost of disposal for oil and grease discharges over permitted limits.

3. pH: The permittee shall pay for the cost of restoring the Wastewater Treatment Plant and facilities to normal operations.

The permittee shall be responsible for any other special surcharges that may be described in the permit.

(o) Surcharge Formula to be Applied in Cases Where Surface Drainage is Connected to the City's Sanitary Sewer System. Whenever Beckley has discovered that a customer's roof drain, downspouts, storm sewer, or other similar facilities conducting surface water have been connected to Beckley's sewer system, and such customer has failed to take appropriate action, within thirty (30) days of receipt of a demand by Beckley in accordance with the Rules of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$S = A \times R \times .0006233 \times C$

S = The surcharge in dollars;

A = The area under roof and/or the area of any other water collection surface connected to the sanitary sewer, in square feet;

R = The measured monthly rainfall, in inches;

.0006233 - A conversion factor to change inches of rain x square feet of surface to thousands of gallons of water;

C = The City's approved rate per thousand gallons of metered water usage.

Beckley shall not impose the surcharge unless, and until, the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or other surface water is being introduced into the sanitary sewer at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system. Said surcharge shall be calculated and imposed for each month that said condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules of the Public Service Commission of West Virginia.

The Initial Rates and Charges provided in Section 9-240 shall be effective March 15, 2004; the Final Rates and Charges shall be effective January 27, 2005.

3. It is further ordained that all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

4. It is further ordained that if any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity or the remaining portions of this ordinance. The Common Council hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

5. That it is hereby ordered and directed to cause this ordinance to be published in accordance with state law.

6. That this Ordinance and the rules, regulations, provisions, requirements, orders, rates, charges, and schedules and matters established and adopted hereby shall take effect and be in full force effective March 15, 2004.

I certify that the foregoing is a certified copy of an Ordinance setting forth sewer rate changes duly adopted by the Common Council of the City of Beckley at its regular meeting on January 27, 2004.

Date: September 28, 2004

Recorder

EGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF BECKLEY CONVENED AT 7:30 P.M., JANUARY 13, 2004 IN COUNCIL CHAMBERS OF BECKLEY CITY HALL.

THOSE PRESENT: Council Members A. K. Minter, Jr., William H. File III, Steve Nickell, Tim Berry, Lee Leftwich, Robert Rappold, and Howard Mollohan; Recorder-Treasurer Gary Sutphin; City Attorney Mark Matkovich; and Secretary Linda Carr.

THOSE ABSENT: Mayor Emmett S. Pugh III.

ALSO PRESENT: Captain Kevin Taylor on behalf of Fire Chief Arnold Bolen, Police Chief Bill Cole, Chief of Code Enforcement Bob Cannon, Street Commissioner Robert Robinson, General Manager of Sanitary Board Ken Richmond, and Parks and Recreation Director Renda Morris.

In the absence of the Mayor, the Recorder-Treasurer called the meeting to order followed by the Pledge of Allegiance to the Flag.

The first order of business was the selection of a Chairman for the meeting. Councilman Mollohan was nominated to chair the meeting by Councilman Minter, which motion was seconded by Councilman Berry and unanimously approved by Council.

Council dispensed with reading of the minutes of the previous meeting, copies of which had been distributed to each member, and adopted the minutes as written on a motion by Councilman File and seconded by Councilman Nickell.

Mr. Matkovich presented for Council approval the first reading of an Ordinance increasing the sewer rates City residents. Following discussion, the first reading of this proposed Ordinance was unanimously approved by Council on a motion by Councilman Minter and seconded by Councilman File.

Mr. Matkovich also presented for first reading an Ordinance for rezoning property on Harper Road from Northwestern Avenue to Hillcrest Street from "R-1", Residential District, to "OR-1", Office-Residential Transitional District. On a motion by Councilman Rappold and seconded by Councilman Nickell, the first reading of this proposed Ordinance was unanimously approved by Council.

The Chairman presented for Council approval a Resolution in support of the construction of the first phase of the New River Parkway. On a motion by Councilman Nickell and seconded by Councilman Berry, the following Resolution was unanimously approved by Council:

NEWPORT TRADING COMPANY, INC.
GENERAL CONTRACTING / GLASS
790 Ritter Drive • P. O. Box 1880 • Beaver, WV 25813

Ronald D. Lilly, President (304) 787-4724
Donna Vest, Sales Manager Office (304) 253-2053 Fax (304) 253-9697
Randall K. Vest, Vice President (304) 252-2347

January 26, 2004

City of Beckley
P.O. Box 2514
Beckley, WV 25801

Re: Bid on building at corner of Heber St and Neville St.

ESTIMATE

We hereby propose to furnish all materials, tools, labor, equipment and supervision necessary to perform the following:

I. GENERAL REQUIREMENTS

A. Contractor shall supply:
1. Contractor's License.
2. Worker's Compensation Certificate.
3. Building Permit.
4. Liability Insurance as required.
5. Bonding as required.

B. Owner shall supply.
1. Temporary electrical power.
2. Potable water.
3. Sanitary facilities.

II. SCOPE OF WORK.

A. Following is an estimate on work to be performed at Rose Turner Building at corner of Heber and Neville St. in Beckley. Price is based off of description and drawing of ESI Inc. of Beckley. Prevailing wages acknowledged as directed by Mr. Gary R. Sutphin. Cost is as follows:
Cost: $104,000.00

This quote will remain firm for 30 days.

ACCEPTANCE

Randall K. Vest
Authorized Signature

Authorized Signature

These bids will be reviewed by Councilmen-at-Large Rappld and Mollohan as well as Mr. Sutphin and Mr. Robinson for possible award at a future meeting.

Mr. Matkovich presented for second reading and public hearing an ordinance for increasing the sewer rates for the City of Beckley. Affidavit of Publication is hereinafter incorporated:

AFFIDAVIT OF PUBLICATIO

BECKLEY NEWSPAPERS INC.

BECKLEY, WEST VIRGINIA 25801

January 23, 2004

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Clerk for Beckley Newspapers, Inc., a corporation, publisher of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of PUBLIC NOTICE
(Description of notice)

was duly published in said newspaper once a week for two successive weeks (Class 2), commencing with the issue of the 16th day of January, 2004, and ending with the issue of the 23rd day of January, 2004, (and was posted at the Raleigh County Courthouse on the 23rd day of January, 2004); that said annexed notice was published on the following dates:

01/16/04,01/23/04 and that the cost of publishing said annexed notice as aforesaid was $ 90.84

Signed Tara Meyer
Tara Meyer
Legal Clerk
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this:
23rd day of January 2004
My commission expires March 31, 2011

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. BLONE
BECKLEY NEWSPAPERS
P. O. BOX 2289
BECKLEY, WEST VIRGINIA 25802
My commission expires March 31, 2011

Diana L. Blone
Notary Public, Raleigh County, West Virginia

COPY OF

PUBLIC NOTICE OF PROPOSED ORDINANCE TO CHANGE SEWER RATES, BECKLEY SANITARY BOARD, WEST VIRGINIA

NOTICE is hereby given that the Beckley Sanitary Board, City of Beckley, West Virginia, a municipal corporation, has had introduced before the Common Council of the City of Beckley on January 13, 2004, an ordinance pursuant to which Article II, Section 9-240, Division 3 of the Code of the City of Beckley, West Virginia, shall be amended effective March 15, 2004, to adopt a new tariff containing increased rates, tolls and charges for furnishing sewer service to approximately 7,662 customers of the sewer system operated by the Sanitary Board of the City of Beckley. A public hearing before a final vote on adoption of said proposed ordinance shall be held in the City Council Chambers, Municipal Building, 409 South Kanawha Street, that any person interested may appear before the Council on January 27, 2004, at 7:30 p.m. and present to the Council any protest or objection he or she may have to the rates or charges proposed. The proposed ordinance further provides for a second additional increase in rates, tolls and charges for said services effective January 27, 2005. The proposed ordinance reads as follows:

"AN ORDINANCE SETTING FORTH SEWER RATE CHARGES AND PENALTIES FOR SERVICE TO CUSTOMERS OF THE SEWAGE SYSTEM OF THE CITY OF BECKLEY AND TO AMEND AND REENACT SECTION 9-240 - DELETE SECTIONS 241, 242, 246, 248, 247, AND 248 - DIVISION 3- RATES AND CHARGES- ARTICLE II - SEWERS AND SEWAGE DISPOSAL- CHAPTER 9 - MUNICIPAL UTILITIES AND SERVICES OF THE CODE OF THE CITY OF BECKLEY."

"BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY that:

1. The findings and recommendations of the Beckley Sanitary Board regarding sewer rate charges for service to customers of the sewage system of the City of Beckley have been re-

4) All over twenty-five thousand (25,000) gallons used per month, $5.34 per 1,000 gallons.

5) Minimum Charge - No bill will be rendered for less than $13.88 per month.

6) Unmetered Users Residential - A flat fee of $30.16 based on 4,500 gallons of water usage per month will be charged for all unmetered customers.

(c) Multiple Occupancy. In apartment buildings, shopping centers, mobile homes, mobile home courts, or other multiple occupancy situations, each unit shall be required to pay not less than the minimum monthly charge provided above.

(d) Sewer Connection Charges. The sewer connection fee will be three hundred dollars ($300.00), or the actual cost of the connection, if higher than three hundred dollars ($300.00). Such actual cost will include payroll, materials, and machine time.

(e) Classification of Users. All users are to be classified by the Sanitary Board or its duly authorized representative either by assigning each one to the "user classification" category according to the principal activity conducted on the user's premises, by individual user analyzation, or by a combination thereof. The three (3) user classifications shall be:

1) For residential service;

2) For commercial service; and

3) For service to establishments producing industrial wastes.

The purpose of such collective and/or individual classification is to facilitate the regulation of wastewater discharges based on wastewater constituents and characteristics to provide an effective means of source control, and to establish a system of charges and fees which will insure an equitable recovery of Beckley's cost.

(f) Delayed Payment Penalty. On all accounts, not paid in full within twenty (20) days of the billing date, a penalty of ten percent (10%) will be addad to the net current sewer amount unpaid.

(g) Rates Outside the City of Beckley. The rates set forth herein shall apply to all users of the municipal sewer system within the City of Beckley, and the rates or charges for all users of the sewers located outside the City whose premises are connected with the interceptor lines of the system, or otherwise, shall be the same as the rates provided herein, unless otherwise provided.

(h) Schedule of Charges for Treatment of Residential Septage, Sludge and Leachate. There is established a rate of five cents ($0.05) per gallon of residential septage, sludge or leachate discharged into

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The public hearing was opened for comments. Mr. Jim Zeller voiced his opposition to the increase and questioned as to whether the City had tried to obtain monies for the projects that need to be completed from any other sources. Mr. Richmond informed those present that application had been made to the Army Corps of Engineers for a grant, but he has heard nothing concerning this award of monies as of yet. Mr. Jon Karl Baldwin asked if the final decision on passage of this Ordinance could be postponed until more residents could attend and express their view on the matter, especially the senior citizens on fixed incomes. Ms. Ellen McQuade of Nebraska Avenue stated she has had a sewer problem in her area for over 20 years and feels some of the monies from the sewer rate increase should be used to help her also. With no other comments to be made, the public hearing was closed. On a motion by Councilman Mollohan and seconded by Councilman Rappold, the following Ordinance was unanimously passed by Council:

FIRST READING 1-13-04

SECOND READING 1-27-04

AN ORDINANCE SETTING FORTH SEWER RATE CHARGES AND PENALTIES FOR SERVICE TO CUSTOMERS OF THE SEWAGE SYSTEM OF THE CITY OF BECKLEY AND TO AMEND AND REENACT SECTION 9-240 -DELETE SECTIONS 241, 242, 245, 246, 247, AND 248 – DIVISION 3 – RATES AND CHARGES – ARTICLE II – SEWERS AND SEWAGE DISPOSAL – CHAPTER 9 – MUNICIPAL UTILITIES AND SERVICES OF THE CODE OF THE CITY OF BECKLEY

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY

that:

1. The findings and recommendations of the Beckley Sanitary Board regarding sewer rate charges for service to customers of the sewage system of the City of Beckley have been received and reviewed by Common Council.

2. Be it further ordained that the following Beckley City Code Sections are hereby revised establishing the following rate structure for the treatment of sewage applicable within the entire territory served:

Sec. 9-240. Schedules for Services inside City.

(a) Initial Rates & Charges. There is established a schedule of just and equitable rates or charges, exclusive of industrial waste or unusual user charges, for the use of, and service rendered by, the municipal sewer system which shall be paid by the owner of each lot, parcel of real estate, or building connected with or using such sewer system which schedule shall be in effect from March 15, 2004 and expire January 27, 2005. Sewer charges, based upon water consumption, shall be as follows:

1) First two thousand (2,000) gallons used per month, $5.98 per 1,000 gallons.

Mr. Matkovich also presented for second reading and public hearing an Ordinance rezoning property on Harper Road from Northwestern Avenue to Hillcrest Street. Affidavit of Publication is hereinafter incorporated:

AFFIDAVIT OF PUBLICATION

BECKLEY NEWSPAPERS INC.

BECKLEY, WEST VIRGINIA 25801

January 23, 2004

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Clerk for Beckley Newspapers, Inc., a corporation, publisher of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of PUBLIC NOTICE
(Description of notice)

was duly published in said newspaper once a week for two successive weeks (Class 2), commencing with the issue of the 16th day of January, 2004, and ending with the issue of the 23rd day of January, 2004, (and was posted at the Raleigh County Courthouse on the 23rd day of January, 2004); that said annexed notice was published on the following dates: 01/16/04,01/23/04 and that the cost of publishing said annexed notice as aforesaid was $ 904.84

Signed Tara Meyer
Tara Meyer
Legal Clerk
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this:
23rd day of January, 2004
My commission expires March 27, 2011

OFFICIAL SEAL
STATE OF WEST VIRGINIA
DIANA L. SLONE
BECKLEY NEWSPAPERS
BECKLEY, WEST VIRGINIA
My commission expires March 27, 2011

Notary Public of Raleigh County,

COPY OF PUBLICATION

PUBLIC NOTICE OF PROPOSED ORDINANCE TO CHANGE SEWER RATES, BECKLEY SANITARY BOARD, WEST VIRGINIA

NOTICE is hereby given that the Beckley Sanitary Board, City of Beckley, West Virginia, a municipal corporation, has had introduced before the Common Council of the City of Beckley on January 13, 2004, an ordinance pursuant to which Article II, Section 9-240, Division 3 of the Code of the City of Beckley, West Virginia, shall be amended effective March 15, 2004, to adopt a new tariff containing increased rates, tolls and charges for furnishing sewer service to approximately 7,862 customers of the sewer system operated by the Sanitary Board of the City of Beckley. A public hearing before a final vote on adoption of said proposed ordinance shall be held in the City Council Chambers, Municipal Building, 409 South Kanawha Street, that any person interested may appear before the Council on January 27, 2004, at 7:30 p.m. and present to the Council any protest or objection he or she may have to the rates or charges proposed. The proposed ordinance further provides for a second additional increase in rates, tolls and charges for said services effective January 27, 2005. The proposed ordinance reads as follows:

"AN ORDINANCE SETTING FORTH SEWER RATE CHARGES AND PENALTIES FOR SERVICE TO CUSTOMERS OF THE SEWAGE SYSTEM OF THE CITY OF BECKLEY AND TO AMEND AND REENACT SECTION 9-240 - DELETE SECTIONS 241, 242, 245, 246, 247, AND 248 - DIVISION 3- RATES AND CHARGES- ARTICLE II - SEWERS AND SEWAGE DISPOSAL- CHAPTER 9 - MUNICIPAL UTILITIES AND SERVICES OF THE CODE OF THE CITY OF BECKLEY."

"BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY that:

1. The findings and recommendations of the Beckley Sanitary Board regarding sewer rate charges for service to customers of the sewage system of the City of Beckley have been received and reviewed by

(b) Final Rates and Charges. There is established a schedule of just and equitable rates or charges, exclusive of industrial waste or unusual user charges, for the use of, and service rendered by, the municipal sewer system which shall be paid by the owner of each lot, parcel of real estate, or building connected with or using such sewer system which schedule shall be in effect on and after January 27, 2005. Sewer charges, based upon water consumption, shall be as follows:

1) First two thousand (2,000) gallons used per month, $6.94 per 1,000 gallons.

2) Next three thousand (3,000) gallons used per month, $6.51 per 1,000 gallons.

3) Next twenty thousand (20,000) gallons used per month, $5.95 per 1,000 gallons.

4) All over twenty-five thousand (25,000) gallons used per month, $5.34 per 1,000 gallons.

5) Minimum Charge - No bill will be rendered for less than $13.88 per month.

6) Unmetered Users Residential - A flat fee of $30.16 based on 4,500 gallons of water usage per month will be charged for all unmetered customers.

(c) Multiple Occupancy. In apartment buildings, shopping centers, mobile homes, mobile home courts, or other multiple occupancy situations, each unit shall be required to pay not less than the minimum monthly charge provided above.

(d) Sewer Connection Charges. The sewer connection fee will be three hundred dollars ($300.00), or the actual cost of the connection, if higher than three hundred dollars ($300.00). Such actual cost will include payroll, materials, and machine time.

(e) Classification of Users. All users are to be classified by the Sanitary Board or its duly authorized representative either by assigning each one to the "user classification" category according to the principal activity conducted on the user's premises, by individual user analyzation, or by a combination thereof. The three (3) user classifications shall be:

COPY OF PUBLICATION

PUBLIC NOTICE OF PROPOSED ORDINANCE TO CHANGE SEWER RATES, BECKLEY SANITARY BOARD, WEST VIRGINIA

NOTICE is hereby given that the Beckley Sanitary Board, City of Beckley, West Virginia, a municipal corporation, has had introduced before the Common Council of the City of Beckley on January 13, 2004, an ordinance pursuant to which Article II, Section 9-240, Division 3 of the Code of the City of Beckley, West Virginia, shall be amended effective March 15, 2004, to adopt a new tariff containing increased rates, tolls and charges for furnishing sewer service to approximately 7,862 customers of the sewer system operated by the Sanitary Board of the City of Beckley. A public hearing before a final vote on adoption of said proposed ordinance shall be held in the City Council Chambers, Municipal Building, 409 South Kanawha Street, that any person interested may appear before the Council on January 27, 2004, at 7:30 p.m. and present to the Council any protest or objection he or she may have to the rates or charges proposed. The proposed ordinance further provides for a second additional increase in rates, tolls and charges for said services effective January 27, 2005. The proposed ordinance reads as follows:

"AN ORDINANCE SETTING FORTH SEWER RATE CHARGES AND PENALTIES FOR SERVICE TO CUSTOMERS OF THE SEWAGE SYSTEM OF THE CITY OF BECKLEY AND TO AMEND AND REENACT SECTION 9-240 - DELETE SECTIONS 241, 242, 246, 245, 247, AND 248 - DIVISION 3- RATES AND CHARGES- ARTICLE II - SEWERS AND SEWAGE DISPOSAL- CHAPTER 9 - MUNICIPAL UTILITIES AND SERVICES OF THE CODE OF THE CITY OF BECKLEY."

"BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY that:

1. The findings and recommendations of the Beckley Sanitary Board regarding sewer rate charges for service to customers of the sewage system of the City of Beckley have been received and reviewed by Common Council.

2. Be it further resolved that the following Beckley City Code Sections are hereby revised establishing the following rate structure for the treatment of sewage applicable within the entire territory served:

Section 9-240. Schedules for Services Inside City.

(a) Initial Rates and Charges. There is established a schedule of just and equitable rates or charges, exclusive of industrial waste or unusual user charges, for the use of, and service rendered by, the municipal sewer system which shall be paid by the owner of each lot, parcel of real estate, or building connected with or using such sewer system which schedule shall be in effect on and after January 27, 2005. Sewer charges, based upon water consumption, shall be as follows:

1) First two thousand (2,000) gallons used per month, $6.84 per 1,000 gallons.

2) Next three thousand (3,000) gallons used per month, $6.51 per 1,000 gallons.

3) Next twenty thousand (20,000) gallons used per month, $5.85 per 1,000 gallons.

4) All over twenty-five thousand (25,000) gallons used per month, $5.34 per 1,000 gallons.

5) Minimum Charge - No bill will be rendered for less than $13.68 per month.

6) Unmetered Users Residential - A flat fee of $30.18 based on 4,500 gallons of water usage per month will be charged for all unmetered customers.

(c) Multiple Occupancy. In apartment buildings, shopping centers, mobile homes, mobile home courts, or other multiple occupancy situations, each unit shall be required to pay not less than the minimum monthly charge provided above.

(d) Sewer Connection Charges. The sewer connection fee will be three hundred dollars ($300.00), or the actual cost of the connection, if higher than three hundred dollars ($300.00). Such actual cost will include payroll, materials, and machine time.

(e) Classification of Users. All users are to be classified by the Sanitary Board or its duly authorized representative either by assigning each one to the "user classification" category according to the principal activity conducted on the user's premises, by individual user analysation, or by a combination thereof. The three (3) user classifications shall be:

1) For residential service;

2) For commercial service; and

3) For service to establishments producing industrial wastes.

The purpose of such collective and/or individual classification is to facilitate the regulation of wastewater discharges based on wastewater constituents and characteristics to provide an effective means of source control, and to establish a system of charges and fees which will insure an equitable recovery of Beckley's cost.

(f) Delayed Payment Penalty. On all accounts not paid in full within twenty (20) days of the billing date, a penalty of ten percent (10%) will be added to the net current sewer amount unpaid.

(g) Rates Outside the City of Beckley. The rates set forth herein shall apply to all users of the municipal sewer system within the City of Beckley, and the rates or charges for all users of the sewers located outside the City whose premises are connected with the interceptor lines of the system, or otherwise, shall be the same as the rates provided herein, unless otherwise provided.

(h) Schedule of Charges for Treatment of Residential Septage, Sludge and Leachate. There is established a rate of five cents ($0.05) per gallon of residential septage, sludge or leachate discharged into the city of Beckley sewer system.

(i) Returned Check Charge. A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of twenty-five dollars ($25.00) shall be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

(j) Reconnection Charge. A twenty-five dollar ($25.00) reconnection fee shall be assessed against each customer for each instance of disconnection of water service for delinquent sewer charges. Water service shall not be restored until all amounts in arrears, including penalties, have been paid.

(k) Leak Adjustment. When a bill reflects unusual water consumption, which can be attributed to eligible leakage on customer's side of meter, a leak adjustment rate of $1.03 per 1,000 gallons of water will be used. This rate shall be applied to all such consumption above the customer's historical average usage.

(l) Security Deposit. A security deposit shall be collected from each applicant on the basis of the following formula:

S = A x R x .0006233 x C

S = The surcharge in dollars;

A = The area under roof and/or the area of any other water collection surface connected to the sanitary sewer, in square feet;

R = The measured monthly rainfall, in inches;

.0006233 = A conversion factor to change inches of rain x square feet of surface to thousands of gallons of water;

C = The City's approved rate per thousand gallons of metered water usage.

Beckley shall not impose the surcharge unless, and until, the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or other surface water is being introduced into the sanitary sewer at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the Water from the sanitary sewer system. Said surcharge shall be calculated and imposed for each month that said condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules of the Public Service Commission of West Virginia.

The Initial Rates and Charges provided in Section 9-240 shall be effective March 15, 2004; the Final Rates and Charges shall be effective January 27, 2005.

~~Section 9-240. Schedules for service inside city.~~ (This section rewritten in its entirety and codified above.)

~~(a) Monthly rate. There is established a schedule of just and equitable rates or charges, exclusive of industrial waste charges, for the use of, and service rendered by, the municipal sewer system which shall be paid by the owner of each lot, parcel of real estate, or building connected with or using such sewer system. Sewer charges based upon water consumption shall be as follows:~~

~~(1) First two thousand (2,000) gallons used per month, four dollars and eighty-eight cents ($4.88) per one thousand (1,000) gallons.~~

~~(2) Next three thousand (3,000) gallons used per month, four dollars and forty-nine cents ($4.49) per one thousand (1,000) gallons.~~

~~(3) Next twenty thousand (20,000) gallons used per month, four dollars and ten cents ($4.10) per one thousand (1,000) gallons.~~

~~(4) All over twenty-five thousand (25,000) gallons used per month, three dollars and sixty-eight cents ($3.68) per one thousand (1,000) gallons. Minimum - Nine dollars and fifty-six cents ($9.56) per month.~~

~~(b) Multiple occupancy in apartment buildings, shopping centers, mobile homes, mobile home courts, or other multiple occupancy situations, each unit shall be required to pay not less than the minimum monthly charge provided above.~~

~~(c) Unmetered users residential. In locations where the customer has no water meter, charges for sewer service shall be based upon a flat rate of (1,000) gallons for each occupant per month, but not less than the minimum monthly rate.~~

~~(d) Sewer connection charge. The sewer connection fee will be two hundred fifty dollars ($250.00) or the actual cost of the connection if higher than two hundred fifty dollars ($250.00). Such actual cost will include payroll, materials, and machine time.~~

~~(e) Classification of users. All users are to be classified by the sanitary board or its duly authorized representative either by assigning each one to a "user classification" category according to the principal activity conducted on the user's premises, by individual user analysation, or by a combination thereof. The two (2) user classifications shall be:~~

~~(1) For residential and commercial service and;~~

~~(2) For service to establishments producing industrial wastes.~~

~~The purpose of such collective and/or individual classification is to facilitate the regulation of wastewater discharges based on wastewater constituents and characteristics to provide an effective means of source control, and to establish a system of charges and fees which will insure an equitable recovery of the sanitary board's cost.~~

~~(f) Industrial user charge. All establishments producing industrial wastes shall pay charges to Beckley and to provide all services rendered to the North Beckley Public Service District on and after 12:01 a.m. January 22, 1994, a rate of one dollar and twenty-six cents ($1.26) per one thousand (1,000) gallons.~~

~~Section 9-241. Rates Outside the City of Beckley. (This section rewritten and moved to Section 9-240(g).)~~

~~The rates set forth in section 9-240 shall apply to all users of the municipal sewer system within the city, and the rates or charges for all users of the sewers located outside the city whose premises are connected with the interceptor lines of the system, or otherwise, shall be the same as the rates provided in such section, unless otherwise provided.~~

~~Section 9-242. Industrial waste cost recovery charge. (This section rewritten and moved to Section 9-240(m).)~~

~~All users heretofore classified by the sanitary board as producing industrial waste, shall pay an industrial user's industrial cost recovery charge for the treatment of its industrial waste as provided by article 1 of this chapter.~~

~~Section 9-245. Occupancy charge. (This section rewritten and moved to Section 9-240(c).)~~

~~A twenty-five dollar ($25.00) reconnection fee shall be assessed against each customer for each instance of disconnection of water service for delinquent sewer charges. Water service shall not be restored until all amounts in arrears, including penalties, have been paid.~~

~~Section 9-246. Schedule of charges of treatment of residential septage. (This section rewritten and moved to Section 9-240(h).)~~

~~There is established a rate of three and one-half cents ($0.035) per gallon of septage discharged into the city of Beckley sewer system.~~

~~Section 9-247. Surcharge formula to be applied in cases where surface drainage is connected to the city's sanitary sewer system. (This section rewritten and moved to Section 9-240(n).)~~

~~Wherever the city has discovered that a building or roof drain, downspout, storm sewer, or other similar facilities conducting surface water have been connected to the City's sewer system, and such customer has failed to take appropriate action, within thirty (30) days of receipt of a demand by the city to comply in accordance with the rules and regulations of the public service commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:~~

~~S = A x R x .0006233 x C~~

~~S = The surcharge in dollars~~

~~A = The area under roof and/or the area of any other water collection surface connected to the sanitary sewer, in square feet;~~

~~R = The measured monthly rainfall, in inches;~~

~~.0006233 = A conversion factor to change inches of rain x square feet of surface to thousands of gallons of water;~~

~~C = The City's approved rate per thousand gallons of metered water usage.~~

~~Beckley shall not impose the surcharge unless, and until, the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or other surface water is being introduced into the sanitary sewer at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the Water from the sanitary sewer system. Said surcharge shall be calculated and imposed for each month that said condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules of the Public Service Commission of West Virginia.~~

The Initial Rates and Charges provided in Section 9-240 shall be effective March 15, 2004; the Final Rates and Charges shall be effective January 27, 2005.

~~Section 9-240. Schedules for service inside city.~~ (This section rewritten in its entirety and codified above.)

~~(a) Monthly rate. There is established a schedule of just and equitable rates or charges, exclusive of industrial waste charges, for the use of, and service rendered by, the municipal sewer system which shall be paid by the owner of each lot, parcel of real estate, or building connected with or using such sewer system. Sewer charges based upon water consumption shall be as follows:~~

~~(1) First two thousand (2,000) gallons used per month, four dollars and eighty-eight cents ($4.88) per one thousand (1,000) gallons.~~

~~(2) Next three thousand (3,000) gallons used per month, four dollars and forty-nine cents ($4.49) per one thousand (1,000) gallons.~~

~~(3) Next twenty thousand (20,000) gallons used per month, four dollars and ten cents ($4.10) per one thousand (1,000) gallons.~~

~~(4) All over twenty-five thousand (25,000) gallons used per month, three dollars and sixty-eight cents ($3.68) per one thousand (1,000) gallons. Minimum - Nine dollars and fifty-six cents ($9.56) per month.~~

~~(b) Multiple occupancy in apartment buildings, shopping centers, mobile homes, mobile home courts, or other multiple occupancy situations, each unit shall be required to pay not less than the minimum monthly charge provided above.~~

~~(c) Unmetered users residential. In locations where the customer has no water meter, charges for sewer service shall be based upon a flat rate of (1,000) gallons for each occupant per month, but not less than the minimum monthly rate.~~

~~(d) Sewer connection charge. The sewer connection fee will be two hundred fifty dollars ($250.00) or the actual cost of the connection if higher than two hundred fifty dollars ($250.00). Such actual cost will include payroll, materials, and machine time.~~

~~(e) Classification of users. All users are to be classified by the sanitary board or its duly authorized representative either by assigning each one to a "user classification" category according to the principal activity conducted on the user's premises, by individual user analysation, or by a combination thereof. The two (2) user classifications shall be:~~

~~(1) For residential and commercial service and;~~

~~(2) For service to establishments producing industrial wastes.~~

~~The purpose of such collective and/or individual classification is to facilitate the regulation of wastewater discharges based on wastewater constituents and characteristics to provide an effective means of source control, and to establish a system of charges and fees which will insure an equitable recovery of the sanitary board's cost.~~

~~(f) Industrial user charge. All establishments producing industrial wastes shall pay charges to Beckley and to provide monthly rainfall, in inches x .0006233 x A conversion factor to change inches of rain x square feet of surface to thousands of gallons of water.~~

~~C = The city's approved rate per thousand gallons of metered water usage.~~

~~The city shall not impose the surcharge unless, and until, the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on site inspection that rain or other surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system.~~

~~Said surcharge shall be calculated and imposed for each month that said condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the rules and regulations of the Public Service Commission of West Virginia.~~

~~Section 9-248. Bad Check Charge. (This section rewritten and moved to Section 9-240 (j).)~~

~~There shall be a bad check charge assessed against each customer writing a bad check for the payment of sewer charges in the amount of the bad check charge as assessed against the city by the applicable bank, but, in any event, the bad check charge shall not exceed fifteen dollars ($15.00) in accordance with the West Virginia Code section.~~

3. It is further ordained that all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

4. It is further ordained that if any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be unconstitutional such decision shall not affect the validity or the remaining portions of this ordinance. The Common Council hereby declares that it would have passed this ordinance, and each section, subsection clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

5. That the City Recorder is hereby authorized and directed to publish a copy of this ordinance and/or notice thereof as may be required by applicable law, in a duly qualified newspaper in the City of Beckley, West Virginia, and the same shall constitute notice to all persons concerned that the foregoing ordinance hereinabove has been introduced at a meeting of the City Council on January 13, 2004, and that the City Council contemplates the adoption thereof, including the amendment of the rates and charges therein set forth as just and equitable rates or charges for use of, and the service rendered by, the sewer system and works of the Beckley Sanitary Board of the City of Beckley, West Virginia, and that any person interested may appear before the Council on January 27, 2004, at 7:30 p.m., in the City Council Chambers, Municipal Building, 409 South Kanawha Street, and present to the Council any protest or objection he or she may have to the rates or charges proposed.

6. That a copy of the proposed Ordinance is and shall be made available for public inspection in the office of the Recorder-Treasurer, Municipal Building, 409 South Kanawha Street and the Sanitary Board of the City of Beckley, 301 South Heber Street, Beckley, WV 25801, between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday.

Gary R. Sutphin
Recorder-Treasurer
City Of Beckley
1-23-FRI-2-RH; LG 6537

RESOLUTION

WHEREAS, the City of Beckley has been petitioned by the Sanitary Board of the City of Beckley to enact an ordinance to authorize the issuance of not more than $11,000,000 of the City's Sewerage System Revenue Bonds, Series 2004 A (the "Series 2004 A Bonds"); and

WHEREAS, it has been determined by the Sanitary Board that certain additions, improvements and betterments to the System should be paid from the issuance of bonds payable from the revenues of the System to be purchased initially by the West Virginia Department of Environmental Protection through the State Revolving Fund in the amount of $9,039,000 and any additional balance through other financial sources.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Beckley approves the Petition of the Sanitary Board of the City of Beckley to the Council of the City of Beckley for the issuance of Series 2004 A Bonds.

This Resolution is duly adopted this 27th day of April 2004 by the Common Council of the City of Beckley on a motion by Councilman Mollohan and seconded by Councilman Rappold

Gary Sutphin - Recorder-Treasurer

PETITION OF THE SANITARY BOARD OF THE CITY OF BECKLEY
TO THE COUNCIL OF THE CITY OF BECKLEY

Whereas, the City of Beckley (the "City") owns a wastewater collection and treatment system, which system is under the operation and control of the City of Beckley Sanitary Board (the "Sanitary Board"); and

Whereas, pursuant to the provisions of Chapter 16, Article 13, Section 5 of the West Virginia Code of 1932, as amended, the Sanitary Board of the City hereby petitions the governing body of the City (the "Council") to enact an ordinance to authorize the issuance of not more than $11,000,000 of the City's Sewerage System Revenue Bonds, Series 2004 A (the "Series 2004 A Bonds"), to pay the costs of acquisition and construction of certain additions, betterments and improvements to the sewerage system of the City (the "System"), hereinafter referred to as the Piney Creek Interceptor Replacement Project (the "Project"); and

Whereas, it has been determined by the Sanitary Board that certain additions, improvements and betterments to the System are necessary and desirable, and the costs of such additions, improvements and betterments are approximately $11,000,000; and

Whereas, the Sanitary Board has determined that the costs for the additions, improvements and betterments to the system should be paid from the issuance of bonds payable from the revenues of the system to be purchased initially by the West Virginia Department of Environmental Protection through the State Revolving Fund in the amount of $9,039,000 and any additional balance through other financial sources.

Now Therefore Be It Resolved by the Sanitary Board of the City of Beckley:

1. That the City Council is requested to issue its sewer system revenue bonds in an amount not to exceed $11,000,000 in order to finance certain costs of making the additions, improvements and betterments to the system, specifically the Piney Creek Interceptor Replacement Project as the same will be later more specifically defined by the ordinance authorizing the issuance of the Series 2004 A Bonds.

2. That the City Council take such other action as may be required in order to issue the Series 2004 A Bonds for the benefit of the City and the users of the system.

Witness our signatures on this the 14th day of April, 2004.

Chairman, Sanitary Board of the City of Beckley

Member

Member

CITY OF BECKLEY

BOND ORDINANCE

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, IMPROVEMENTS AND BETTERMENTS TO THE PUBLIC SEWERAGE SYSTEM FACILITIES OF THE CITY OF BECKLEY AND THE FINANCING OF THE COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $11,000,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A, PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT RELATING TO THE SERIES 2004 A 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 COMMON COUNCIL OF THE CITY OF BECKLEY:

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 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law.

SECTION 1.02. FINDINGS.

It is hereby found, determined and declared that:

A. The City of Beckley (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Raleigh County of said State.

B. The Issuer presently owns and operates a public sanitary sewerage collection and treatment system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, betterments and improvements for the existing sewerage facilities of the Issuer consisting of the replacement

of approximately six (6) miles of interceptor sewer line in the Piney Creek area of Beckley to reduce inflow and infiltration, and relieve hydraulic overloading along said line. The new sewer will consist of pipe 18 to 30 inches in diameter and replaces old pipe from 12 to 24 inches in diameter. The new sewer will extend from the wastewater treatment plant along Piney Creek and Whitestick Creek through the unincorporated community of Raleigh and the Town of Mabscott to its terminus near Crescent Road, Beckley, West Virginia and other various upgrades and repairs (collectively, the "Project") which constitute properties for the collection and treatment of wastewater (the existing sewerage system facilities of the Issuer, the Project and any further additions thereto or extensions thereof is herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have been approved by the Issuer.

C. The Issuer intends to issue its Sewerage System Revenue Bonds, Series 2004 A, in order to pay the remaining costs of the Project, to provide funds to reimburse itself for costs previously incurred and to pay the costs of issuance of the Series 2004 A Bonds.

D. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Bonds and all funds and accounts and other payments provided for herein, all as such terms are hereinafter defined.

E. It is deemed necessary for the Issuer to issue its Sewerage System Revenue Bonds, Series 2004 A, in the total aggregate principal amount of not more than $11,000,000.00 (the "Series 2004 A Bonds"). The proceeds of the Series 2004 A Bonds will used to finance certain costs for the construction and acquisition of the Project and to reimburse the Issuer for certain costs already incurred. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Bonds prior to and during construction or acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Reserve Accounts; 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 of the Authority (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition 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 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project, as hereinafter defined.

F. The Issuer intends to finance such costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority") in connection with West Virginia Water Pollution Control Revolving Fund Program (the "SRF Program"), pursuant to the Act, in order to take advantage of the favorable terms available to the Issuer under the SRF Program.

G. The period of usefulness of the System after completion of the Project is not less than 20 years.

H. It is in the best interests of the Issuer that its Series 2004 A Bonds be sold to the Authority (as hereinafter defined) pursuant to the terms and provisions of a loan agreement to be entered into by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection ("DEP"), in form satisfactory to the Issuer, the Authority and the DEP, as shall be approved herein.

I. The Series 2004 A Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. The Issuer has met the parity and coverage requirements of the Prior Bonds and the Prior Ordinances. Prior to the issuance of the Series 2004 A Bonds, the Issuer will obtain (i) a certificate of an Independent Certified Public Accountant stating that the parity and coverage tests of the Prior Bonds have been met and (ii) the written consent of the Registered Owners of the Prior Bonds (except the Series 1995A Bonds) to the issuance of the Series 2004 A Bonds on a parity with the Prior Bonds. The Issuer is not required to obtain the parity consent of the Registered Owners of the Series 1995 A Bonds.

The Series 2004 A Bonds shall be issued senior and prior to the Notes with respect to liens, pledge and source of and security for payment and in all other respects. Other than the Prior Bonds and the Notes, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

J. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bonds, or will have so complied prior to issuance of any thereof, including obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia.

K. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Council to issue the Series 2004 A Bonds for the purposes set forth herein.

M. The Project has been approved 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, or is grandfathered from review thereby.

SECTION 1.03. BOND LEGISLATION CONSTITUTES CONTRACT.

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

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

SECTION 1.04. DEFINITIONS.

The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means Chapter 16, Article 13 and Chapter 22C, Article 2 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 of the Series 2004 A Bonds, or any other agency of the State of West Virginia that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor of the Issuer or any acting Mayor duly appointed by the Governing Body.

"Bond Construction Trust Fund" means the Bond Construction Trust Fund established by Section 4.01 hereof.

"Bondholder," "Holder of the Bonds," "Holder" 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.

"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.

"Bonds" means the Series 1995 A Bonds, the Series 1998 A Bonds, and the Series 2004 A Bonds and any bonds on a parity therewith authorized to be issued hereunder.

"Closing Date" means, the date upon which there is an exchange of the Bonds for a portion of the proceeds of the Series 2004 A Bonds by the Authority.

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

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

"Consulting Engineers" means Chapman Technical Group, St. Albans, West Virginia, or any engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System or portion thereof, in accordance with Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended.

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

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

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

"DEP" means the West Virginia Department of Environmental Protection, or any agency, board or department of the State that succeeds to the functions of the DEP.

"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 Common Council of the Issuer, as it may hereafter be constituted.

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

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 7.01 hereof) or any tap fees.

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

"Independent Certified Public Accountants" shall mean 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.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes.

"Issuer" means The City of Beckley, a municipal corporation and political subdivision of the State of West Virginia, in Raleigh County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreement" means the Loan Agreement to be entered into among the West Virginia Department of Environmental Protection, the Authority and the Issuer providing for the purchase of the Series 2004 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 by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2004 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 2004 A Bonds Reserve Account. For purpose of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2004 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

"Nonpurpose Investment" means any Investment Property which is acquired with the Gross Proceeds of the Bonds and is not acquired in order to carry out the governmental purpose of the Bonds.

"Notes" means the Subordinate Sewer Revenue Notes, Series 2002, of the Issuer, dated September 12, 2002, issued in the original principal amount of $500,000.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any or interest on the Bonds, charges for

depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"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 moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article IX hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 6.07 hereof.

"Paying Agent" means the West Virginia Municipal Bond Commission, as paying agent for the Series 2004 A Bonds.

"Prior Bonds" means, collectively, the Series 1995 A Bonds and the Series 1998 A Bonds.

"Prior Ordinances" means collectively, the ordinances enacted by the Council of the Issuer on June 14, 1994, effective June 28, 1994, as amended and supplemented by a Supplemental Resolution adopted April 3, 1995, pursuant to which the Series 1995 A Bonds were issued and the ordinance enacted November 25, 1997, effective December 9, 1997, as amended and supplemented b a Supplemental Resolution adopted February 28, 1998, pursuant to which the Series 1998 A Bonds were issued.

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

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

"Qualified Investments" means and includes any of the following:

(a) Government Obligations;

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

evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

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

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

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

(h) The West Virginia "consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended; and

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

"Recorder" means the Recorder of the Issuer.

"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 or Bonds is registered.

"Registrar" means the Bond Registrar.

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

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Section 4.01 of the Prior Ordinance.

"Reserve Accounts" means, collectively, the respective Reserve Accounts for the Series 2004 A Bonds and the Prior Bonds.

"Revenue Fund" means the Revenue Fund established by Section 4.01 of the Prior Ordinance.

"Series 1995 A Bonds" means the Sewerage System Refunding Revenue Bonds, Series 1995 A, of the Issuer, dated April 1, 1995, issued in the original principal amount of $3,095,000.

"Series 1998 A Bonds" means the Sewerage System Revenue Bonds, Series 1998 A, of the Issuer, dated March 17, 1998, issued in the original principal amount of $11,000,000.

"Series 2004 A Bonds" means the not more than $11,000,000.00 in aggregate principal amount of Sewerage System Revenue Bonds, Series 2004 A, of the Issuer issued pursuant to this Ordinance.

"Series 1995 A Bonds Reserve Account" means the Series 1995 A Bonds Reserve Account established pursuant to Section 4.02 of the Prior Ordinance.

"Series 1998 A Bonds Reserve Account" means the Series 1998 A Bonds Reserve Account established pursuant to Section 4.02 of the Prior Ordinance.

"Series 2004 A Bonds Reserve Account" means the Series 2004 A Bonds Reserve Account established in the Series 2004 A Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 1995 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1995 A Bonds in the then current or any succeeding year.

"Series 1998 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1998 A Bonds in the then current or any succeeding year.

"Series 2004 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2004 A Bonds in the then current or any succeeding year.

"Series 1995 A Bonds Sinking Fund" means the Series 1995 A Bonds Sinking Fund established by Section 4.01 of the Prior Ordinance.

"Series 1998 A Bonds Sinking Fund" means the Series 1998 A Bonds Sinking Fund established by Section 4.02 of the Prior Ordinance.

"Series 2004 A Bonds Sinking Fund" means the Series 2004 A Bonds Sinking Fund established by Section 4.02 hereof.

"Sinking Funds" means, collectively, the respective Sinking Funds for the Series 2004 A Bonds and the Prior Bonds.

"SRF Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement.

"SRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds from the State.

"SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

"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 resolutions authorizing the sale of the Series 2004 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2004 A Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including the Renewal and Replacement Fund, the Sinking Funds and the Reserve Accounts.

"System" means the existing sewerage system facilities of the Issuer, as expanded by the Project, and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with said sewerage system; and shall include the Project, any

and all additions, extensions, improvements properties or other facilities at any time acquired or constructed for the System after completion of the Project.

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.

ARTICLE II

AUTHORIZATION OF CONSTRUCTION AND ACQUISITION OF THE PROJECT

SECTION 2.01. AUTHORIZATION FOR THE CONSTRUCTION AND ACQUISITION OF THE PROJECT.

There is hereby authorized and ordered the acquisition and construction of the Project in accordance with the plans and specifications prepared by the Consulting Engineers. The Project consists generally of upgrading the existing Wastewater Treatment Plant, consisting of the replacement of approximately six (6) miles of interceptor sewer line in the Piney Creek area of Beckley to reduce inflow and infiltration, and relieve hydraulic overloading along said line. The new sewer will consist of pipe 18 to 30 inches in diameter and replaces old pipe from 12 to 24 inches in diameter. The new sewer will extend from the wastewater treatment plant along Piney Creek and Whitestick Creek through the unincorporated community of Raleigh and the Town of Mabscott to its terminus near Crescent Road, Beckley, West Virginia and other various upgrades and repairs. The proceeds of the Bonds hereby authorized shall be applied as provided in Article V hereof.

The cost of the Project is estimated not to exceed $9,801,503.00, of which approximately $8,039,000 will be obtained from proceeds of the Series 2004 A Bonds, approximately $1,000,000 will be obtained from the United States Army Corps of Engineers grant and approximately $762,503 will be obtained from funds of the Issuer.

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 SRF Program.

ARTICLE III

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

SECTION 3.01. AUTHORIZATION OF SERIES 2004 A BONDS.

For the purposes of funding the Series 2004 A Bonds Reserve Account, paying certain Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2004 A Bonds and related costs, there shall be issued negotiable Series 2004 A Bonds of the Issuer, in an aggregate principal amount of not more than $11,000,000.00. Said Series 2004 A Bonds shall be issued as a single bond and designated as "Sewerage System Revenue Bonds, Series 2004 A." The Series 2004 A Bonds shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2004 A Bonds remaining after funding the Series 2004 A Bonds Reserve Account, if funded from proceeds of the Series 2004 A Bonds, shall be deposited in the Bond Construction Trust Fund and applied as set forth in Section 5.02 hereof.

SECTION 3.02. TERMS OF THE SERIES 2004 A BONDS.

The Series 2004 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, payable quarterly on such dates; shall be payable and mature on such dates and in such amounts as set forth in Schedule Y attached to the Loan Agreement; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution, or as specifically provided in the Loan Agreement. The Series 2004 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. Interest on the Series 2004 A Bonds shall be paid by check or draft of the Paying Agent mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2004 A Bonds shall be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2004 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2004 A Bonds shall be exchangeable at the option and expense of the Holder for other fully registered 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 have such terms as set forth in a supplemental resolution.

SECTION 3.03. EXECUTION OF BONDS.

The Series 2004 A Bonds shall be executed, either manually or by facsimile, in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the 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 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 2004 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 forms set forth in Section 3.10 shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any 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 Bonds issued hereunder.

SECTION 3.05. NEGOTIABILITY, TRANSFER AND REGISTRATION.

Subject to the provisions for transfer of registration set forth below, the Series 2004 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 any of said 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 any of the Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of the Bonds.

The registered 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 Bonds or transferring the registered Bonds are exercised, 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. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the period commencing on the 15th day of the month preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

SECTION 3.06. BONDS MUTILATED, DESTROYED, STOLEN OR LOST.

In case any Series 2004 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 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 2004 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 Net Revenues derived from the operation of the System as herein provided. No holder or holders of any of the Series 2004 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2004 A Bonds or the interest thereon.

SECTION 3.08. BONDS SECURED BY PLEDGE OF NET REVENUES; LIEN POSITION WITH RESPECT TO PRIOR BONDS.

The payment of the debt service of the Series 2004 A Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the holders of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments into the Sinking Funds, the Reserve Accounts and the Renewal and Replacement Fund are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due. The City has issued Subordinate Sewer Revenue Notes, Series 2002 (the "Notes") and the Notes are hereby declared to be expressly subordinate to the Prior Bonds and to the Series 2004 A Bonds.

SECTION 3.09. DELIVERY OF BONDS.

The Issuer shall execute and deliver the Series 2004 A Bonds to the Bond Registrar, and the Registrar shall authenticate, register and deliver the Bonds to the original purchasers thereof upon receipt of the documents set forth below:

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

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

C. The unqualified approving opinion of bond counsel on the Bonds.

SECTION 3.10. FORM OF BONDS.

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

[Form of Series 2004 A Bond]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BOND,
SERIES 2004 A

No. AR-__ $_____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF BECKLEY, a municipal corporation and political subdivision of the State of West Virginia in Raleigh 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 hereto as Exhibit A and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, beginning _____, 200__, together with interest thereon at the rate of two percent (2%) per annum and an administrative fee of one percent (1%) per annum, which interest and administrative fee shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, beginning _____, as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Exhibit B.

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"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of _____, West Virginia, as registrar (the "Registrar") on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection, dated _____, 2004.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, improvements and betterments to the sewerage system facilities of the Issuer as further defined in the Ordinance authorizing the issuance of the Series 2004 A Bonds (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and a Bond Ordinance and Supplemental Resolution, duly enacted and adopted, respectively, by the Issuer on _____, 2004, and _____, 2004, (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH THE SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1995 A, OF THE ISSUER (THE "SERIES 1995 A BONDS"), ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF $3,095,000, AND THE SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A, OF THE ISSUER (THE "SERIES 1998 A BONDS"), ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF $11,000,000, WITH RESPECT TO LIENS, PLEDGE AND SOURCES OF AND SECURITY FOR PAYMENT (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a first lien pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, which first lien is shared with the holders of the Prior Bonds, moneys in the Reserve Account created under the Bond Legislation for this Bond (the "Series 2004 A Bonds Reserve Account"), and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute 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 or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 2004 A Bonds Reserve Account and unexpended Bond proceeds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for principal of and interest on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds; provided however, that so long as there exists in the Series 2004 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

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

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

IN WITNESS WHEREOF, the CITY OF BECKLEY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated _____, 2004.

[SEAL]

_____
Mayor

ATTEST:

_____
Recorder

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the City of Beckley Sewerage System Revenue Bonds, Series 2004 A, 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:

_____,
as Registrar

By
Its Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

Amount	Date

EXHIBIT B

DEBT SERVICE SCHEDULE

(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: _____, ___.

In the presence of:

SECTION 3.11. SALE OF SERIES 2004 A BONDS; RATIFICATION OF EXECUTION OF LOAN AGREEMENT WITH AUTHORITY.

The Series 2004 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 Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof and the Recorder 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, ratified and approved. The Loan Agreement, including all schedules and exhibits attached thereto, are hereby approved and ratified.

SECTION 3.12. "AMENDED SCHEDULE A" FILING.

Upon completion of acquisition and construction of the Project, the Issuer will file with the Authority and the DEP, a schedule, the form of which will be provided by the DEP setting forth the actual costs of the Project and sources of funding therefor.

ARTICLE IV

SYSTEM REVENUES AND APPLICATION THEREOF

SECTION 4.01. CONTINUATION OR ESTABLISHMENT OF FUNDS AND ACCOUNTS WITH DEPOSITORY BANK.

The following special funds or accounts are hereby continued or created with and shall be held by, the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

(1) Revenue Fund;

(2) Renewal and Replacement Fund;

(3) Bond Construction Trust Fund; and

(4) Rebate Fund.

SECTION 4.02. CONTINUATION OR ESTABLISHMENT OF FUNDS AND ACCOUNTS WITH COMMISSION.

The following special funds or accounts are hereby continued or established with the Commission:

(1) Series 1995 A Bonds Sinking Fund.

(2) Series 1995 A Bonds Reserve Account.

(3) Series 1998 A Bonds Sinking Fund.

(4) Series 1998 A Bonds Reserve Account.

(5) Series 2004 A Bonds Sinking Fund.

(6) Series 2004 A Bonds Reserve Account.

SECTION 4.03. SYSTEM REVENUES; FLOW OF FUNDS.

A. The entire Gross Revenues derived from the operation of the System 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 herein provided.

(1) The Issuer shall first, each month, pay from the Revenue Fund, all current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1995 A Bonds Sinking Fund, the amount required by the Prior Ordinances to pay the interest on the Series 1995 A Bonds; (ii) for deposit in the Series 1998 A Bonds Sinking Fund, the amount required by the Prior Ordinances to pay the interest on the Series 1998 A Bonds; and (iii) commencing 3 months prior to the first date of payment of interest on the Series 2004 A Bonds, for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2004 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2004 A Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2004 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1995 A Bonds Sinking Fund, the amount required by the Prior Ordinances to pay the principal of the Series1995 A Bonds; (ii) for deposit in the Series 1998 A Bonds Sinking Fund, the amount required by the Prior Ordinances to pay the principal of the Series 1998 A Bonds; and (iii) commencing 3 months prior to the first date of payment of principal of the Series 2004 A Bonds, for deposit in the Series 2004 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2004 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2004 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1995 A Bonds Reserve Account, the amount required by the Prior Ordinances; (ii) for deposit in the Series 1998 A Bonds Reserve Account, the amount required by the Prior Ordinances; and (iii) commencing 3 months prior to the first date of payment of principal of the Series 2004 A Bonds, if not fully funded upon issuance of the Series 2004 A Bonds, for deposit in the Series 2004 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2004 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2004 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2004 A Bonds Reserve Requirement.

(5) From the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, transfer to the Renewal and Replacement Fund a sum equal to 2½% of the Gross Revenues each month as previously set forth in the Prior Ordinances and not in addition thereto, exclusive of any payments into the Reserve Accounts. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Series 2004 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2004 A Bonds as the same shall become due. Moneys in the Series 2004 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2004 A Bonds, as the same shall come due, when other moneys in the Series 2004 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Bond Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Series 2004 A Bonds Sinking Fund and applied to the next ensuing interest payments, if any, due on the Series 2004 A Bonds, and then to the next ensuing principal payments due thereon.

Any withdrawals from the Series 2004 A Bonds Reserve Account which result in a reduction in the balance of the Series 2004 A Bonds Reserve Account to below the Series 2004 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments set forth in Section 4.03(A)(2) above have been made in full.

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the respective Sinking Fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective Reserve Account in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2004 A Bonds Sinking Fund or into the Series 2004 A Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2004 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account, and all amounts required for such accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority, the Issuer shall make the necessary arrangements whereby required payments into such accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates hereunder.

Moneys in the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 7.01 hereof.

The Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2004 A Bonds Outstanding under the conditions and restrictions herein set forth.

Interest, principal or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 2004 A Bonds and the Prior Bonds, in accordance with the respective principal amounts then Outstanding.

A. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payments, 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.

B. The Issuer shall also on the first day of each month (if the first day is not a business day, then the first business day of each month), commencing with the payment set forth in Section 5.03.A.(2) hereof, remit to the Commission the SRF Administrative Fee set forth in the Schedule Y attached to the Loan Agreement.

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

D. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its check to the Authority by the 5th day of each calendar month.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar or the Depository Bank, on such dates as the Commission, the Registrar or the Depository Bank, as the case may be, shall require such additional sums as shall be necessary to pay their respective charges then due. The Issuer shall also remit from the Revenue Fund to the Authority, on such

dates as the Authority shall require, the Issuer's allocable share of reasonable administrative expenses, if any, incurred by the Authority with respect to the SRF Program.

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

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates.

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

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

ARTICLE V

BOND PROCEEDS

SECTION 5.01. APPLICATION OF SERIES 2004 A BOND PROCEEDS; PLEDGE OF UNEXPENDED BOND PROCEEDS.

From the moneys received from the sale of the Series 2004 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2004 A Bonds, there shall first be deposited with the Commission in the Series 2004 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

B. Next, from the proceeds of the Series 2004 A Bonds, there shall be deposited with the Commission in the Series 2004 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 2004 A Bonds Reserve Account.

C. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2004 A Bonds, such moneys shall be deposited with the Depository Bank in the Series 2004 A Bonds Construction Trust Fund and applied solely to payment of the costs of the Project in the manner set forth in Section 5.02 hereof and until so expended, are hereby pledged as additional security for the Series 2004 A Bonds.

D. 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 2004 A Bonds shall be expended as approved by the DEP.

SECTION 5.02. DISBURSEMENTS FROM THE BOND CONSTRUCTION TRUST FUND.

On or before the Closing Date, the Issuer shall have delivered to the DEP and the Authority a report listing the specific purposes for which the proceeds of the Series 2004 A Bonds will be expended and the disbursement procedures for such proceeds, including a estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 5.01 hereof, disbursements from the Bond Construction Trust Fund shall be made only after submission to, and approval from the Authority and DEP of the following:

(1) a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement as Exhibit C, in compliance with the construction schedule, and

(2) a certificate signed by an Authorized Officer and the Consulting Engineers, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

(B) That 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;

(C) That each of such costs has been otherwise properly incurred; and

(D) That payment for each of the items proposed is then due and owing, or that Issuer or the Sanitary Board has previously paid such item in connection with the Project is being reimbursed for such payment.

Pending such application, moneys in the Bond Construction Trust Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

ARTICLE VI

ADDITIONAL COVENANTS OF THE ISSUER

SECTION 6.01. 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 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 Bonds as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon is Outstanding and unpaid.

SECTION 6.02. BONDS NOT TO BE INDEBTEDNESS OF THE ISSUER.

The 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. No Holder or Holders of any Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Bonds or the interest thereon.

SECTION 6.03. BONDS SECURED BY PLEDGE OF NET REVENUES.

The payment of the debt service of the Series 2004 A Bonds shall be secured by a first lien on the Net Revenues derived from the operation of the System, on a parity with the liens on the Net Revenues in favor of the holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on the Bonds and to make the payments into the Sinking Funds and the Reserve Accounts, and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as the same become due, and for the other purposes provided in the Bond Legislation.

SECTION 6.04. INITIAL SCHEDULE OF RATES AND CHARGES.

The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The Issuer has enacted a rate ordinance on January 27, 2004, and such rates are incorporated herein by reference as a part hereof.

So long as the Series 2004 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions

necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2004 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

SECTION 6.05. SALE OF THE SYSTEM.

Except as otherwise required by law or with the consent of the DEP and 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 pay fully all the Bonds Outstanding in accordance with Section 9.01 hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Bonds, immediately be remitted to the Commission for deposit in the Sinking Funds, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Bonds. Any balance remaining after the payment of all the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $25,000, the Sanitary Board shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $25,000 but not in excess of $50,000, the Sanitary Board shall first, in writing determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of $25,000 and not in excess of $50,000, shall be deposited in the Renewal and Replacement Fund. Such payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said fund 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 $50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

SECTION 6.06. ISSUANCE OF OTHER OBLIGATIONS PAYABLE OUT OF REVENUES AND GENERAL COVENANT AGAINST ENCUMBRANCES.

Except as provided in this Section 6.06 and in Section 6.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; provided, however, that additional Bonds on a parity with the Bonds may be issued as provided for in Section 6.07 hereof. All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts at the time of the issuance of such subordinate obligations have been made and are current. The Notes are expressly subordinate to the foregoing Bonds and shall only be entitled to payment so long as the foregoing Bonds are current in their payments.

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

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System from any grants for the Project, or any other obligations related to the Project or the System.

SECTION 6.07. PARITY BONDS.

So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this Bond Legislation, except under the conditions and in the manner herein provided and with the written consent of the Authority and the DEP.

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

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

(1) The Bonds then Outstanding;

(2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and

(3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates enacted by the Issuer, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the period for appeal of which has expired prior to issuance of such Parity Bonds.

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

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

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

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

SECTION 6.08. BOOKS AND RECORDS.

The Issuer shall keep complete and accurate records of the cost of acquiring the Project Site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP, 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 DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing System, at any reasonable time following commencement of construction.

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

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

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

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

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

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

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular or any successor thereof and the Single Audit Act or any successor thereof and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to the Authority and DEP, or any other original purchaser of the Bonds. Such audit report submitted to the Authority and DEP 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 and that revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for 2 years following completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement as Exhibit B, and forward a copy to the Authority and DEP by the 10th day of each month.

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 proposed site of 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 by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the Loan Agreement or as promulgated from time to time.

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

SECTION 6.09. RATES.

So long as the Series 1995 A Bonds, the Series 1998 A Bonds and the Series 2004 A Bonds are outstanding, the City shall maintain rates and charges for the use of the System consistent with the requirements of the ordinances authorizing the issuance of such bonds.

Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds; provided that, in the event an amount equal to or in excess of the Reserve Requirement is on deposit in the Reserve Account and reserve accounts for obligations prior to or on a parity with the Bonds are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds. In any event, subject to any requirements of law, the Issuer shall not reduce the rates and charges for services set forth in the rate ordinance described in the Section 6.04 hereof.

SECTION 6.10. OPERATING BUDGET.

The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and DEP within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual

budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, the DEP and to any Holder of any Bonds, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority, the DEP and any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

SECTION 6.11. NO COMPETING FRANCHISE.

To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

SECTION 6.12. 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 DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP 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 DEP covering the supervision and inspection of the development and construction of the Project and bearing 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 DEP and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Loan Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the

System during the entire term of the Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

SECTION 6.13. ENFORCEMENT OF COLLECTIONS.

The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules of the Issuer, 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 and any services and facilities of the water system, if so owned by the Issuer, 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 of either system 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, or, if the waterworks facilities are not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

The Issuer further acknowledges that it has a water termination agreement with Beckley Water Company and will maintain and use such agreement subject to all the rules, regulations and order of the Public Service Commission.

SECTION 6.14. NO FREE SERVICES.

The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the

operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

SECTION 6.15. INSURANCE AND CONSTRUCTION BONDS.

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

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

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

(3) 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 such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

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

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

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

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

The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount at least 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 verity such bonds prior to commencement of construction.

SECTION 6.16. COMPLETION OF PROJECT.

The Issuer will complete the Project as promptly as possible and operate and maintain the System in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project, and all orders and approvals from the Public Service Commission of West Virginia and the West Virginia Infrastructure and Jobs Development Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Series 2004 A Bonds required by State law, with all requisite appeals having expired without successful appeal.

SECTION 6.17. TAX COVENANTS.

The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2004 A Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be

derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% or $5,000,000 of the Net Proceeds of the Series 2004 A Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2004 A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2004 A Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including those deemed necessary by the Authority) so that the interest on the Series 2004 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including those determined by the Authority) which would adversely affect such exclusion.

SECTION 6.18. MANDATORY CONNECTIONS.

The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State of West Virginia and the rules and

regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

SECTION 6.19. COMPLIANCE WITH LOAN AGREEMENT AND LAW.

The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with copies of all documents submitted to the Authority.

The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the DEP or other State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

SECTION 6.20. 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 6.21. CONTRACTS; PUBLIC RELEASES.

A. The Issuer shall, simultaneously with the delivery of the Series 2004 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2004 A Bonds held in "contingency" as set forth in the schedule attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the DEP before expending any proceeds of the Series 2004 A Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding as being provided by the DEP 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 VII

INVESTMENT OF FUNDS; NON ARBITRAGE

SECTION 7.01. INVESTMENTS.

Any moneys 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 moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 7.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, 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 Bonds are Outstanding.

SECTION 7.02. ARBITRAGE.

The Issuer covenants that (i) it will restrict the use of the proceeds of the Series 2004 A Bonds in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Series 2004 A Bonds, so that the Series 2004 A Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Series 2004 A Bonds) so that the

interest on the Series 2004 A Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

SECTION 7.03. TAX CERTIFICATE AND REBATE.

The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds and fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of the Ordinance.

If it is determined that the Issuer does not qualify for an exception to Section 148 of the Code or the Issuer is otherwise subject to rebate in connection with the Bonds, the Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the Issuer shall deposit, or cause to be deposited, with the Depository Bank in a separate fund designated the Rebate Fund, such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder, if any, and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Issuer shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer. The Issuer may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 7.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 7.03 in accordance with the requirements of Section 148(f) of the Code. In the event the Issuer fails to make such rebates as required, the

Issuer shall pay the required rebate amount and all interest, penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation and certificate with respect thereto of, if the Issuer qualifies for the small governmental issue exception to rebate or any other exception therefrom, then the Issuer shall submit to the Authority a certificate stating that it is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as such term "gross proceeds" is defined in the Code).

ARTICLE VIII

DEFAULT AND REMEDIES

SECTION 8.01. EVENTS OF DEFAULT.

Each of the following events shall constitute an "Event of Default" with respect to the Series 2004 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 2004 A Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2004 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2004 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, Registrar or any other Paying Agent or a Holder of a Bond; or

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

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

SECTION 8.02. REMEDIES.

Upon the happening and continuance of any Event of Default, any Registered Owner of 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 principal or interest then due, (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 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 Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided however, that all rights and remedies of the holders of the Series 2004 A Bonds shall be on a parity with those of the Prior Bonds.

SECTION 8.03. APPOINTMENT OF RECEIVER.

Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds any Registered Owner of a Bond shall,

in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

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

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

ARTICLE IX

PAYMENT OF BONDS

SECTION 9.01. PAYMENT OF BONDS.

If the Issuer shall pay or there shall otherwise be paid, to the Registered Owners of the Series 2004 A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2004 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2004 A Bonds from gross income for federal income tax purposes.

ARTICLE X

MISCELLANEOUS

SECTION 10.01. AMENDMENT OR MODIFICATION OF BOND LEGISLATION.

No material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Bonds shall be made without the consent in writing of the Registered Owners of the Series 2004 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications. 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 on the Bonds from gross income of the holders thereof.

SECTION 10.02. BOND LEGISLATION CONSTITUTES CONTRACT.

The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the 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 10.03. 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 Bonds.

SECTION 10.04. 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 10.05. CONFLICTING PROVISIONS REPEALED.

Except for the Prior Ordinances, 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, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive) so long as the Prior Bonds are outstanding.

SECTION 10.06. COVENANT OF DUE PROCEDURE, ETC.

The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the enactment of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, Recorder and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

SECTION 10.07. EFFECTIVE DATE.

This Ordinance shall take effect immediately following public hearing hereon.

SECTION 10.08. STATUTORY NOTICE AND PUBLIC HEARING.

Upon adoption hereof, an abstract of this Bond Legislation 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 Register Herald, which is a qualified newspaper published and of general circulation in the City of Beckley, together with a notice stating that this Bond Legislation has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the City Council upon a date certain, not less than ten days subsequent to the date of the first publication of the abstract and notice, and present protests, and that a certified copy of the 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.

CITY OF BECKLEY

BOND ORDINANCE

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Passed on First Reading - July 13, 2004

Passed on Second Reading - July 27, 2004

Effective Date Following
Public Hearing - July 27, 2004

Mayor _____

Recorder _____

I certify that the foregoing is a certified copy of an Ordinance duly adopted by the Common Council of the City of Beckley at its regular meeting on July, 27, 2004.

Date: 9-28-04

Emmett S. Pugh, II, Mayor
City of Beckley

CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 2004 A

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE CITY OF BECKLEY SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A; AUTHORIZING AND APPROVING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Council (the "Governing Body") of the City of Beckley (the "Issuer") has duly and officially passed a Bond Ordinance on July 13, 2004, effective July 27, 2004 (the "Bond Ordinance"), entitled:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, IMPROVEMENTS AND BETTERMENTS TO THE PUBLIC SEWERAGE SYSTEM FACILITIES OF THE CITY OF BECKLEY AND THE FINANCING OF THE COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $11,000,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A, PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT RELATING TO THE SERIES 2004 A BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of the Sewerage System Revenue Bonds, Series 2004 A, of the Issuer, in an aggregate principal amount not to exceed $11,000,000 (the "Bonds"), and has authorized the execution and delivery of a loan agreement relating to the Bonds,

including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), all in accordance with Chapter 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"); and in the Bond Ordinance it is provided that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds should be established by a supplemental resolution, and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be approved and ratified by the Issuer, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF BECKLEY, AS FOLLOWS:

Section 1. It is hereby found and determined that:

(A) The Notice of Public Hearing and Abstract of Bond Ordinance (the "Notice") was duly published in The Register Herald, a qualified newspaper published and of general circulation in the Issuer, with the first publication thereof being not less than 10 days before the day set by the Bond Ordinance and the Notice for the public hearing at which interested persons may appear before the Council and present protests and suggestions and with the last publication thereof being prior to said date set by the Bond Ordinance and the Notice for the public hearing, and a copy of the Affidavit of Publication reflecting such publications is incorporated herein by reference;

(B) In accordance with the Bond Ordinance and the Notice, the Recorder has maintained in his or her office a certified copy of the Bond Ordinance for review by interested persons during the regular office hours of such office;

(C) In Council chambers, City Hall, Beckley, West Virginia, on July 27, 2004, at 7:30 p.m., prevailing time, in accordance with the Bond Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Bond Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) At the public hearing, no significant reasons were presented that would require modification or amendment of the Bond Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the Issuer; and

(E) The Bond Ordinance shall be put into effect as of the date hereof and the Bonds contemplated thereby shall be issued, all as provided in the Bond Ordinance and this Supplemental Resolution.

Section 2. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewerage System Revenue Bonds, Series 2004 A, of the Issuer, originally represented by a single Bond, numbered AR-1, in the original principal amount of $9,039,000. The Bonds shall be dated the date of delivery, shall finally mature June 1, 2026, shall bear interest at the rate of 2% per annum. The principal of and interest on the Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2006, in the amounts as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Issuer hereby approves and shall pay the SRF Administrative Fee equal to 1% of the principal amount of the Bonds set forth in the Schedule Y attached to the Loan Agreement. The Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the Registered Owner of the Bonds.

Section 3. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 4. The Issuer hereby ratifies, approves and accepts the Loan Agreement, including all schedules and exhibits attached thereto, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the application to the DEP and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 5. The Issuer hereby appoints and designates J. P. Morgan Trust Company, National Association, Pittsburgh, Pennsylvania, to serve as Registrar (the "Registrar") for the Bonds under the Bond Ordinance and approves and accepts the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed and approved.

Section 6. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Commission"), to serve as Paying Agent for the Bonds under the Bond Ordinance.

Section 7. The Issuer hereby appoints and designates Bank One, West Virginia, National Association, Beckley, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 8. Series 2004 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2004 A Bonds Sinking Fund as capitalized interest.

Section 9. Series 2004 A Bonds proceeds in the amount of $-0-shall be deposited in the Series 2004 A Bonds Reserve Account.

Section 10. The remaining proceeds of the Bonds, as advanced from time to time, shall be deposited in or credited to the Series 2004 A Bonds Construction Trust Fund, as received from time to time for payment of costs of the Project, including costs of issuance of the Bonds.

Section 11. The Mayor and Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered to the Authority pursuant to the Loan Agreement at the time of closing on the Bonds.

Section 12. The acquisition and construction of the Project and the financing thereof with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 13. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to invest all moneys in such money market accounts until further directed in writing by the Issuer. Moneys in the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 14. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project.

Section 15. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 16. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code, including any regulations to be promulgated thereunder.

Section 17. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 14th day of September, 2004.

Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the City of Beckley on the 14th day of September, 2004.

Dated this 28th day of September, 2004.

[SEAL]

Recorder

FIRST READING
5-25-04

SECOND READING
6-8-04

AN ORDINANCE AMENDING THE CITY OF BECKLEY ZONING ORDINANCE OF 1971 AND THE COMPREHENSIVE PLAN OF THE CITY OF BECKLEY AND THE ZONE MAP OF THE CITY OF BECKLEY, AS FROM TIME TO TIME HAS BEEN AMENDED, TO PROVIDE FOR THE REZONING OF 115 PARCELS FROM THE NORTH SIDE OF KLAUS STREET, THE SOUTH SIDE OF HARTLEY AVENUE AND FROM THE WEST SIDE OF HARTLEY AVENUE TO THE EAST SIDE OF BOSTICK AVENUE WITHIN THE CITY OF BECKLEY, RALEIGH COUNTY, WEST VIRGINIA, FROM "R-3", MULTIPLE FAMILY, TO "R-1", ONE-FAMILY DISTRICT

WHEREAS, the City of Beckley Planning Commission, during a regular session on April 13, 2004, conducted a lawful public hearing on the petition of Charles and Joyce Massey requesting to rezone 115 parcels to "R-1", One-Family District, which property is more specifically located on the north side of Klaus Street, the south side of Hartley Avenue, and from the west side of Hartley Avenue to the east side of Bostick Avenue (see attached map).

WHEREAS, Council notes the following findings made by the Planning Commission about the subject property:

1. Commission authority to consider this matter is found in WV Code 8-24-39 and City of Beckley Code Chapter 15, Article I, Section 15-3 and 15-5(b);

2. Public notice was published in the Beckley Register/Herald prior to the public hearing of April 13, 2004.

3. Special notice was sent by regular mail on February 19, 2004 and April 1, 2004, in excess of 10 days prior to each public hearing, as required by City of Beckley Code Chapter 15, Article I, Section 15-5(b)(2) to 44 residents or owners within 300 feet each time. Four phone calls, no letters or office visits were received. The calls were of inquiry and subsequent support for the petition.

4. The City of Beckley police, fire, and public works departments, City of Beckley Sanitary Board, and W.Va. Department of Transpotation were not notified of the proposed change. It will have no effect on services each provide and is more restrictive than the existing zoning.

Mr. Matkovich presented for Council approval the first reading of an Ordinance authorizing the acquisition and construction of certain additions, improvements, and betterments to the public sewerage system facilities of the City of Beckley and financing costs thereof through the issuance of not more than $11 million in aggregate principal amount of sewerage system revenue bonds. On a motion by Councilman File and seconded by Councilman Mollohan, the first reading of this proposed Ordinance was unanimously approved by Council.

Mr. Matkovich next presented for Council approval the first reading of an Ordinance authorizing and approving the Piney Creek Interceptor Sewer Replacement Project and Project Cooperation Agreement with the Army Corps of Engineers for a grant in the amount of $1 million. On a motion by Councilman File and seconded by Councilman Berry, the first reading of this proposed Ordinance was unanimously approved by Council.

The public hearing was opened for comments. Mr. Jim Zeller asked if grant funds could be obtained again in the future and was told that these funds are available only once. Ms. Marilyn Foley felt this was an excellent idea. With no further comments, the public hearing was closed. On a motion by Councilman Mollohan and seconded by Councilman Nickell, the following Ordinance was unanimously approved by Council:

FIRST READING 6-8-04

SECOND READING 7-13-04

ORDINANCE AUTHORIZING AND APPROVING THE PINEY CREEK INTERCEPTOR SEWER REPLACEMENT PROJECT AND PROJECT COOPERATION AGREEMENT

WHEREAS, an ordinance by the City of Beckley authorizing participation and ratifying prior participation with the Department of the Army, Corps of Engineers, in the Piney Creek Interceptor Sewer Replacement Project, as generally described in the Beckley Sanitary Board's Application to the West Virginia Infrastructure and Jobs Development Council, dated June 2003, and authorizing the Mayor and the General Manager of the Sanitary Board to act for and on behalf of the City of Beckley in executing, accepting or otherwise approving all documents, agreements, instruments, or other necessary papers, required by the Department of the Army for participation in the implementation of the Project.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY that:

Section One: The City of Beckley hereby ratifies prior participation and acts of the Beckley Sanitary Board and its representatives and officials in the implementation of the Piney Creek Interceptor Sewer Replacement Project, as generally described in the Beckley Sanitary Board's Application to the West Virginia Infrastructure and Jobs Development Council, dated June 2003, with the Department of the Army, Corps of Engineers, and further, hereby authorizes and approves the participation of the Beckley Sanitary Board, through its representatives and officials, in the implementation of the Project with the Department of the Army, Corps of Engineers.

Mr. File also presented for second reading an Ordinance authorizing the acquisition and construction of certain additions, improvements, and betterments to the public sewerage system facilities. Affidavit of Publication is hereinafter incorporated:

AFFIDAVIT OF PUBLICATION

BECKLEY NEWSPAPERS INC.

BECKLEY, WEST VIRGINIA 25801

July 01, 2004

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Clerk for Beckley Newspapers, Inc., a corporation, publisher of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of PUBLIC HEARING
(Description of notice)

was duly published in said newspaper once a week for two successive weeks (Class 3), commencing with the issue of the 17th day of June, 2004, and ending with the issue of the 1st day of July, 2004, (and was posted at the Raleigh County Courthouse on the 1st day of July, 2004); that said annexed notice was published on the following dates:

06/17/04,06/24/04,07/01/04 and that the cost of publishing said annexed notice as aforesaid was $ 148.83

Signed Tara Meyer
Tara Meyer
Legal Clerk
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this:
1st day of July, 2004

My commission expires March 27, 2011.

OFFICIAL SEAL
STATE OF WEST VIRGINIA
DIANA L. SLONE
BECKLEY NEWSPAPERS
P.O. BOX 2481
BECKLEY, WV 25801
My commission expires March 27, 2011

Notary Public of Raleigh County, West Virginia

COPY OF P

service; provided for the enforcement of collection of fees, rates, rentals or other charges for service; provided for mandatory connections under certain circumstances; and provided for the discontinuance of service for non-payment of the fees, rates, rentals and other charges of the System.

12. Established that terms for defaults and the remedies of the owners of the Series 2004 A Bonds; provided for the security for and the rights and remedies of the owners of the Series 2004 A Bonds including the appointment of a receiver.

13. Provided that the City will take all actions that may be required of it so that the interest on the Series 2004 A Bonds will be and remain excluded from gross income for federal income tax purpose.

The City of Beckley contemplates the issuance of the Series 2004 A Bonds described in, and under the conditions set forth in, the Ordinance abstracted above. Any person interested may appear before the Council of the City of Beckley at a meeting thereof at 7:30 o'clock p.m. EPT, on Tuesday, June 29, 2004, in the City Hall, 409 South Kanawha Street, in the City of Beckley, West Virginia, and present protests and be heard as whether the Ordinance shall be put into effect. At said hearing all objections and suggestions shall be heard and the Council shall take such actions as it shall deem proper in the premises.

A certified copy of the Ordinance as adopted by the Council of the City on June 8, 2004, is on file in the office of the City Recorder and at the office of the Sanitary Board for review by interested persons during the regular office hours of such offices.

Gary Sutphin
Recorder,
City of Beckley, WV
7-1-THU-2-RH; LG 7267.

Mr. Denny Vaughan of the Vaughan law firm and bond counsel for this project, spoke to Council explaining the particulars of the project and answering questions from Council. Following discussion, the second reading of this proposed Ordinance was unanimously approved by Council.

Mr. File presented for Council approval the first reading of an Ordinance amending Section 15-321 - flashing signs - of the City Code. These amendments will restrict the location of message boards or LED signs to B-1, B-2, B-3, and M Zoning Districts and restrict the height to eight feet high and the width shall be no wider than the building upon which it will be placed. On a motion by Councilman Nickell and seconded by Councilman Rappold, the first reading of this proposed Ordinance was unanimously approved by Council.

A REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF BECKLEY CONVENED AT 7:30 P.M., JULY 27, 2004, IN COUNCIL CHAMBERS OF BECKLEY CITY HALL.

THOSE PRESENT: Mayor Emmett S. Pugh III; Council Members A. K. Minter, Jr., Steve Nickell, Tim Berry, Lee Leftwich, Robert Rappold, and Howard Mollohan; Recorder-Treasurer Gary Sutphin; City Attorney William H. File III; and Secretary Linda Carr.

ALSO PRESENT: Fire Chief Kevin Taylor, Police Chief Bill Cole, Chief of Code Enforcement Bob Cannon, General Manager of the Sanitary Board Ken Richmond, Executive Director of Human Rights Commission Elmer Day, Systems Technology Administrator William Kelly, and Director of Housing and Community Development Manuel Cartelle.

The Mayor called the meeting to order followed by the Pledge of Allegiance to the Flag.

Council dispensed with reading of the minutes of the previous meeting, copies of which had been distributed to each member, and adopted the minutes as written on a motion by Councilman Rappold and seconded by Councilman Berry.

Mr. File presented for public hearing an Ordinance authorizing the acquisition and construction of certain additions, improvements, and betterments to the public sewerage system facilities. Affidavit of Publication is hereinafter incorporated:

AFFIDAVIT OF PUBLICATION

BECKLEY NEWSPAPERS INC.

BECKLEY, WEST VIRGINIA 25801

July 23, 2004

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Clerk for Beckley Newspapers, Inc., a corporation, publisher of the newspaper entitled The Register-Herald, an independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of PUBLIC HEARING
(Description of notice)

was duly published in said newspaper once a week for two successive weeks (Class 2), commencing with the issue of the 16th day of July, 2004, and ending with the issue of the 23rd day of July, 2004, (and was posted at the Raleigh County Courthouse on the 23rd day of July, 2004); that said annexed notice was published on the following dates:

07/16/04,07/23/04 and that the cost of publishing said annexed notice as aforesaid was $ 216.24

Signed Tara Meyer
Tara Meyer
Legal Clerk
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this:
23rd day of July, 2004

My commission expires March 27, 2011
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. STONE
BECKLEY NEWSPAPERS
P. O. BOX 2933
BECKLEY, WV 25801
My commission expires March 27, 2011

Diana L. Stone
Notary Public of Raleigh County, West Virginia

COPY OF PUBLICATION

Public Hearing for the following Ordinance will be held during the regular meeting of the Common Council of the City of Beckley beginning at 7:30 p.m. on July 27, 2004 in Council Chambers of Beckley City Hall. All interested parties are urged to attend.

ABSTRACT OF ORDINANCE AND NOTICE OF PUBLIC HEARING

Notice is hereby given to any person interested that on July 13, 2004, the Common Council (the "Council") of the City of Beckley, West Virginia (the "City"), adopted an Ordinance (the "Ordinance") that:

1. Determined that the City now owns and operates a public sewer collection, transportation and treatment system (the "System").

2. Determined that it is necessary for the City to issue its Sewer Revenue Bonds, Series 2004 A in the amount not to exceed $11,000,000 (the "Series 2004 A Bonds"), in order to provide funds to pay the costs to acquire and construct certain additions, betterments and improvements for the existing sewerage facilities of the City.

3. Provided the sale of the Series 2004 A Bonds to the West Virginia Water Development Authority pursuant to the terms and provisions of a loan agreement and as established by the Ordinance and in a supplemental resolution of Council.

4. Directed that the Series 2004 A Bonds be dated their date of issuance, bear interest payable on March 1, June 1, September 1 and December 1 of each year at the rate of two percent (2%) per annum, together with an administrative fee equal to one percent (1%) per annum, and shall contain such other terms, provisions, conditions and limitations as provided by the Ordinance and prescribed by supplemental resolution of Council; that the Bonds be executed in the name of the City by the Mayor and the seal of the City be affixed thereto and attested to by the City Recorder; and that said Bonds be duly authenticated by the registrar.

5. Provided for the purposes.

The City of Beckley contemplates the issuance of the Series 2004 A Bonds described in and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of the City of Beckley at a meeting thereof, at 7:30 o'clock p.m. EDT, on Tuesday, July 27, 2004, in the City Hall, 409 South Kanawha Street, in the City of Beckley, West Virginia, and present protests and be heard as whether the Ordinance shall be put into effect. At said hearing all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

A certified copy of the Ordinance as adopted by the Council of the City on July 13, 2004, is on file in the office of the City Recorder and at the office of the Sanitary Board for review by interested persons during the regular office hours of such offices.

Gary Sutphin, Recorder
City Of Beckley
West Virginia
7-23-FRI-2-RH; LG 7328

The public hearing was opened for comments. There was no one present in opposition to the passage of this Ordinance, and Jim Zeller, Marilyn Foley, and John Sadowski spoke in favor of passage of the proposed Ordinance. There being no further comments, the public hearing was closed. On a motion by Councilman Mollohan and seconded by Councilman Nickell, the following Ordinance was unanimously approved by Council:

ABSTRACT OF ORDINANCE AND NOTICE OF PUBLIC HEARING

Notice is hereby given to any person interested that on June 8, 2004, the Common Council (the "Council") of the City of Beckley, West Virginia (the "City"), adopted an Ordinance (the "Ordinance") that:

1. Determined that the City now owns and operates a public sewer collection, transportation and treatment system (the "System").

2. Determined that it is necessary for the City to issue its Sewer Revenue Bonds, Series 2004 A in the amount not to exceed $11,000,000 (the "Series 2004 A Bonds"), in order to provide funds to pay the costs to acquire and construct certain additions, betterments and improvements for the existing sewerage facilities of the City.

3. Provided for the sale of the Series 2004 A Bonds to the West Virginia Water Development Authority pursuant to the terms and provisions of a loan agreement and as established by the Ordinance and in a supplemental resolution of Council.

4. Directed that the Series 2004 A Bonds be dated their date of issuance, bear interest payable on March 1, June 1, September 1 and December 1 of each year at the rate of two percent (2%) per annum, together with an administrative fee equal to one percent (1%) per annum, and shall contain such other terms, provisions, conditions and limitations as provided by the Ordinance and prescribed by supplemental resolution of Council; that the Bonds be executed in the name of the City by the Mayor and the seal of the City be affixed thereto and attested to by the City Recorder; and that said Bonds be duly authenticated by the registrar.

5. Provided for the monthly payment of principal and interest on the Series 2004 A Bonds; provided for the creation of a sinking fund for the Series 2004 A Bonds.

6. Provided for the disposition of bond proceeds; created a construction fund, a revenue fund and a reserve fund for the Series 2004 A Bonds.

7. Provided that the Series 2004 A Bonds shall not be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the revenues of the System.

8. Provided that the 2004 Series A Bonds will be secured by a first lien on the net revenues of the System, on a parity with the lien on the net revenues in favor of the holders of the Prior Bonds as defined in the Ordinance.

Mr. File presented the second reading and public hearing of an Ordinance amending Section 15-321 - flashing signs - of the City Code. These amendments will restrict the location of message boards or LED signs to B-1, B-2, B-3, and M Zoning Districts and restrict the height to eight feet high and the width shall be no wider than the building upon which it will be placed. Affidavit of Publication is hereinafter incorporated:

REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF BECKLEY CONVENED AT 7:30 P.M., SEPTEMBER 14, 2004, IN COUNCIL CHAMBERS OF BECKLEY CITY HALL.

THOSE PRESENT: Mayor Emmett S. Pugh III; Council Members A. K. Minter, Jr., Tim Berry, Lee Leftwich, Ann Worley, Robert Rappold, and Howard Mollohan; Recorder-Treasurer Gary Sutphin; City Attorney William H. File III; and Secretary Linda Carr.

THOSE ABSENT: Councilman Steve Nickell.

ALSO PRESENT: Fire Chief Kevin Taylor, Police Chief Bill Cole, Chief of Code Enforcement Bob Cannon, Director of Exhibition Mine Renda Morris, Director of Beckley Renaissance, Inc. Jill Moorefield, General Manager of Sanitary Board Ken Richmond, and Street Commissioner Robert Robinson.

The Mayor called the meeting to order followed by the Pledge of Allegiance to the Flag.

Council dispensed with reading of the minutes of the previous meeting, copies of which had been distributed to each member, and adopted the minutes as written on a motion by Councilman Rappold and seconded by Councilman Berry.

The Mayor announced this as the date advertised for receipt of bids for the purchase of cargo trailers to be used by the Highway Safety Program. Affidavit of Publication is hereinafter incorporated:

I hereby certify that the attached minutes of the September 14, 2004 regular eeting of the Common Council of the City of Beckley were adopted by the Common Council at its regular meeting on September 28, 2004 on a motion by Councilman Rappold and seconded by Councilman Mollohan.

9/29/04
Date

Gary R. Sutphin
Recorder-Treasurer

WELLS CARGO
SINCE 1954
1503 W. McNaughton St.
P.O. Box 726
Elkhart, Indiana 46515-0726
1-800-348-7653
Phone: (574) 264-9861
FAX: (574) 264-5930
Web: www.wellscargo.com

ESTIMATE

DATE: 09/13/04

2990		11/09/04	5197629
TW121			

SOLD TO
Governor's Highway Safety
Program
Law-Enforcement Liaison Sct
P O Box 5457
Beckley, WV 25801

SHIP TO
Governor's Highway Safety
Program
Law-Enforcement Liaison Sct
P O Box 5457
Beckley, WV 25801

C.O.D.	Mark Bonek		E506261	09/10/04	2

			Cam Bar Lock - Opening 30"W x 63"H		
14	1.000	EA	Double Rear Doors with Aluminum Anti-Rack Cam Bar Lock mounted with Steel Strap Hinges with Free Flow Pins and Grease Zirks Opening 64 1/2"W x 63"H		
15	12.000	LF	3/4" Exterior Grade Plywood Floor, Exterior Surface Undercoated, Interior Surface Painted Gray		
16	24.000	FT	Surface Mounted 'E' Track on Floor - Track Fastened to Top of Floor with Screws ADVISE LOCATION	4.75	114.00
17	12.000	LF	3/8" Plywood Interior Sidewall Liner	7.60	91.20
18	1.000	EA	12 Volt Interior Wall Switch	16.00	16.00
19	1.000	EA	12 Volt Dome Light with Optic Lens	17.00	17.00
20	201.000	SFT	.030 Prefinished White Smooth Exterior Aluminum Installed Vertically with Non-Corrosive Mechanical Fasteners		
21	1.000	EA	ROOF IS A ONE PIECE ALUMINUM ROOF FASTENED TO A .072 EXTRUDED ANODIZED ALUMINUM COVE WITH DRIP RAIL APPROX. 6" FROM SIDEWALLS SCREW LINE COVERED WITH FOAM TAPE		
22	1.000	EA	24" High Aluminum Tread Plate Stone Guard with Wrapped Integrated Corners	199.00	199.00
23	1.000	EA	14" x 14" Screened Translucent Roof Vent	49.00	49.00

PRICES F.O.B. FACTORY UNLESS OTHERWISE NOTED

Sep.13. 2004 10:23AM Wells Cargo, Inc. No.4886 P. 6

The Mayor opened and read the following bids:

The Mayor also announced this as the date advertised for receipt of bids for the interior demolition and asbestos removal of a structure located at 325 Neville Street, formerly known as the Thrifty Building.

Affidavit of Publication is hereinafter incorporated:

The Mayor opened and read the following bids:

SOUTHERN INSULATION, INC.

5218-20 Monroe Place
Hyattesville, Maryland, 20781
Phone (301) 985-3050
Fax (301) 985-3029

PROPOSAL # BC003

	PAGE 1 of
PHONE: FAX :	DATE 9/9/2004
JOB NAME: **Thrifty Building**	
	JOB PHONE
ATTENTION:	DATE OF PLANS:

TO:

City of Beckley,WV

We are pleased to present this bid for the interior demolition of the Thrifty Building.

Consisting of

1 Total strip out of the basement
2 Total strip out of the 1st floor
3 Total strip out of the 2nd floor
4 Total strip out of the 3rd floor

This proposal is based on an agreeable schedule and contract terms.

WE PROPOSE HEREBY TO FURNISH MATERIAL AND LABOR-COMPLETE IN ACCORDANCE WITH ABOVE SPECIFICATIONS, FOR THE SUM OF:

PAYMENT TO BE MADE AS FOLLOWS: $61,118.48

All Material Is Guaranteed To Be As Specified. All Work Will Be Completed In A Substantial Workmanlike Manner According To Specifications Submitted Per Standard Practices. Any Alteration Or Deviation From Above Specifications Involving Extra Costs Will Be Executed Only And Above The Estimate. All Agreements Contingent Upon Strikes, Accidents or Delays Beyond Our Control. Owner To Carry Fire, Tornado And Other Necessary Insurance. Our Workers Are Fully Covered By Workmen's Compensation Insurance.

AUTHORIZED SIGNATURE Brian Colson

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF IT IS NOT ACCEPTED WITHIN 30 DAYS

ACCEPTANCE OF PROPOSAL - The above prices, specification and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

DATE OF ACCEPTANCE _____

Lastly, the Mayor announced this as the date advertised for receipt of bids for the purchase of a thermal imaging camera for the Fire Department. Affidavit of Publication is hereinafter incorporated:

There were no bids received for this item.

All bids received will be reviewed by Councilmen-at-Large Rappold and Mollohan as well as Mr. Sutphin and the appropriate department head for possible award at a future meeting.

The Mayor presented the name of Jerry L. Smales for appointment to the Human Rights Commission. Mr. Smales replaces Helen Weeks, and his term will expire June 30, 2005. On a motion by Councilman Rappold and seconded by Councilman Mollohan, the appointment of Mr. Smales was unanimously approved by Council.

Mr. File presented for Council approval a Supplemental Resolution providing as to the principal amount, date, maturity date, interest rate, payment schedule, sale price, and other terms of the City of Beckley Sewerage System Revenue Bonds, Series 2004. On a motion by Councilman Mollohan and seconded by Councilman Berry, the following Supplemental Resolution was unanimously approved by Council:

CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 2004 A

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE CITY OF BECKLEY SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A; AUTHORIZING AND APPROVING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Council (the "Governing Body") of the City of Beckley (the "Issuer") has duly and officially passed a Bond Ordinance on July 13, 2004, effective July 27, 2004 (the "Bond Ordinance"), entitled:

AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, IMPROVEMENTS AND BETTERMENTS TO THE PUBLIC SEWERAGE SYSTEM FACILITIES OF THE CITY OF BECKLEY AND THE FINANCING OF THE COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $11,000,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A, PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT RELATING TO THE SERIES 2004 A BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of the Sewerage System Revenue Bonds, Series 2004 A, of the Issuer, in an aggregate principal amount not to exceed $11,000,000 (the "Bonds"), and has authorized the execution and delivery of a loan agreement relating to the Bonds,

Mr. File also presented for Council approval the first reading of an Ordinance amending the Zoning Ordinance of the City of Beckley in reference to dogs and cats as well as certain farm animals, fowl, reptiles, and exotic animals in the City limits. On a motion by Councilman Mollohan and seconded by Councilman Rappold, the first reading of this proposed Ordinance was unanimously approved by Council.

The Mayor presented for Council approval a Resolution authorizing the Mayor to submit the necessary paperwork for the City to administer grant funds in the amount of $7,500 for the Appalachian Bible College. On a motion by Councilman Rappold and seconded by Councilman Mollohan, the following Resolution was unanimously approved by Council:

RESOLUTION

WHEREAS, through the efforts of our local State delegation, Appalachian Bible College has been awarded $7,500 through the Local Economic Development Assistance Program; and

WHEREAS, these funds will be used for renovation of the Alpine Office of Appalachian Bible College; and

WHEREAS, the City of Beckley has been designated to administer these funds.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY that the Mayor is authorized to submit the necessary paperwork in order to receive these funds.

THIS RESOLUTION is duly adopted by the Common Council of the City of Beckley at its regular meeting of September 14, 2004 on a motion by Councilman Robert Rappold and seconded by Councilman Howard Mollohan

Gary R. Sutphin - Recorder-Treasurer

The Mayor also presented to Council the annual letter to the Alcohol Beverage Control Commission for Chili Nite in October. On a motion by Councilman Rappold and seconded by Councilman Berry, the Mayor was unanimously authorized to submit this letter to obtain the appropriate permits for this event.

Councilman File presented for Council approval a Resolution for designation of the National Incident Management System (NIMS) as the basis for all incident management in the City of Beckley. On a motion by Councilman Rappold and seconded by Councilman Mollohan, the following Resolution was unanimously approved by Council:

RESOLUTION

DESIGNATION OF THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) AS THE BASIS FOR ALL INCIDENT MANAGEMENT IN THE CITY OF BECKLEY

WHEREAS, the President in Homeland Security Directive (HSPD)-5, directed the Secretary of the Department of Homeland Security to develop and administer a National Incident Management System (NIMS) which would provide a consistent nationwide approach for Federal, State, local and tribal governments to work together more effectively and efficiently to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size or complexity; and

WHEREAS, the collective input and guidance from all Federal, State, local and tribal homeland security partners has been, and will continue to be, vital to the effective implementation and utilization of a comprehensive NIMS; and

WHEREAS, it is necessary and desirable that all Federal, State, local and tribal emergency agencies and personnel coordinate their efforts to effectively and efficiently provide the highest levels of incident management; and

WHEREAS, HSPD-5 requires Federal departments and agencies to make adoption of the NIMS by State, tribal and local organizations a condition for Federal preparedness assistance beginning in fiscal year 2005; and

WHEREAS, to facilitate the most efficient and effective incident management it is critical the Federal, State, local and tribal organizations utilize standardized terminology, standardized organizational structures, interoperable communications, consolidated action plans, unified command structures, uniform personnel qualification standards, uniform standards for planning, training and exercising, comprehensive resource management and designated incident facilities during emergencies or disasters; and

WHEREAS, the NIMS standardized procedures for managing personnel, communications, facilities and resources will improve the City of Beckley's ability to utilize federal funding to enhance local and state agency readiness, maintain first responder safety and streamline incident management processes; and

WHEREAS, the Incident Command System components of NIMS are already an integral part of various incident management activities throughout the City of Beckley, including current emergency management training programs; and

WHEREAS, the National Commission on Terrorist Attacks (9-11 Commission) recommended adoption of a standardized Incident Command System.

Under old business, the Mayor informed Council that he has talked with the Board of Education concerning the old Vo-Tech Building on Second Avenue. Nothing definite on this demolition has been decided, but items previously stored in this building have been removed. The Mayor will keep Council informed on the progress of this demolition.

Councilman Minter asked if any City funds were provided to resurface the tennis counts at Woodrow Wilson High School. He was informed that no City funds were provided for this project.

Under new business, the Mayor commended Jill Moorefield and her committee members for the success of the recent 11th Annual Kids Classic Festival.

Mr. Jim Zeller also commended Jill on the fireworks held Saturday night as the closing event of the Kids Classic. Mr. Zeller also complained again about a tree in a public right-of-way that he feels is obstructing his use of this right-of-way. The Mayor has reviewed the area and does not feel this tree hampers the use of this right-of-way. He also informed Mr. Zeller that the City is not going to cut this tree down.

Ms. Sarah Richards of 236 Klaus Street came before Council with the complaint that she has called the Police Department several times concerning incidents in her neighborhood to which they have not assisted her. She has repeatedly asked for increased patrol in this area but has received no response. Chief Cole will meet with Ms. Richards after the meeting to obtain more information about her complaint.

With no further business to be addressed, the meeting was adjourned at 8:02 p.m. on a motion by Councilman Rappold and seconded by Councilman Mollohan.

AFFIDAVIT OF PUBLICATION

BECKLEY NEWSPAPERS INC.

BECKLEY, WEST VIRGINIA 25801

July 23, 2004

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Clerk for Beckley Newspapers, Inc., a corporation, publisher of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of PUBLIC HEARING
(Description of notice)

duly published in said newspaper once a week for two successive weeks (Class 2), commencing with the issue of the 16th day of July, 2004, and ending with the issue of the 23rd day of July, 2004, (and was posted at the Raleigh County Courthouse on the 23rd day of July, 2004); that said annexed notice was published on the following dates: 07/16/04,07/23/04 and that the cost of publishing said annexed notice as aforesaid was $ 262.61

Signed Tara Meyer
Tara Meyer
Legal Clerk
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this:
23rd day of July, 2004

My commission expires March 27, 2011

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. SLONE
BECKLEY NEWSPAPERS
P. O. BOX 2089
BECKLEY, WV 25801
My commission expires March 27, 2011

L Slone
Notary Public of Raleigh County,
West Virginia

COPY OF PUBLICATION

Public Hearing for the following Ordinance will be held during the regular meeting of the Common Council of the City of Beckley beginning at 7:30 p.m. on July 27, 2004 in Council Chambers of Beckley City Hall. All interested parties are urged to attend.

ABSTRACT OF ORDINANCE AND NOTICE OF PUBLIC HEARING

Notice is hereby given to any person interested that on July 13, 2004, the Common Council (the "Council") of the City of Beckley, West Virginia (the "City"), adopted an Ordinance (the "Ordinance") that:

1. Determined that the City now owns and operates a public sewer collection, transportation and treatment system (the "System").

2. Determined that it is necessary for the City to issue its Sewer Revenue Bonds, Series 2004 A in the amount not to exceed $11,000,000 (the "Series 2004 A Bonds"), in order to provide funds to pay the costs to acquire and construct certain additions, betterments and improvements for the existing sewerage facilities of the City.

3. Provided the sale of the Series 2004 A Bonds to the West Virginia Water Development Authority pursuant to the terms and provisions of a loan agreement and as established by the Ordinance and in a supplemental resolution of Council.

4. Directed that the Series 2004 A Bonds be dated their date of issuance, bear interest payable on March 1, June 1, September 1 and December 1 of each year at the rate of two percent (2%) per annum, together with an administrative fee equal to one percent (1%) per annum, and shall contain such other terms, provisions, conditions and limitations as provided by the Ordinance and prescribed by supplemental resolution of Council; that the Bonds be executed in the name of the City by the Mayor and the seal of the City be affixed thereto and attested to by the City Recorder; and that said Bonds be duly authenticated by the registrar.

5. Provided for the purposes.

The City of Beckley contemplates the issuance of the Series 2004 A Bonds described in, and under the conditions set forth in, the Ordinance abstracted above. Any person interested may appear before the Council of the City of Beckley at a meeting thereof at 7:30 o'clock p.m. EDT, on Tuesday, July 27, 2004, in the City Hall, 409 South Kanawha Street, in the City of Beckley, West Virginia, and present protests and be heard as whether the Ordinance shall be put into effect. At said hearing all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

A certified copy of the Ordinance as adopted by the Council of the City on July 13, 2004, is on file in the office of the City Recorder and at the office of the Sanitary Board for review by interested persons during the regular office hours of such offices.

Gary Sutphin, Recorder
City Of Beckley
West Virginia
7-23-FRI-2-RH; LG 7386

Notary Public of Raleigh County,
P. O. BOX 2
BECKLEY, WV
My commission expires March 27, 2014
West Virginia

the Mayor and the seal of the City be affixed thereto and attested to by the City Recorder; and that said Bonds be duly authenticated by the registrar.

5. Provided for the monthly payment of principal and interest on the Series 2004 A Bonds; provided for the creation of a sinking fund for the Series 2004 A Bonds.

6 Provided for the disposition of bond proceeds; created a construction fund, a revenue fund and a reserve fund for the Series 2004 A Bonds.

7. Provided that the Series A Bonds shall not be or constitute an indebtness of the City within the meaning of any constitutional, statutory or charter limitation or indebtness, but shall be payable and solely from the revenues of the System.

8. Provided that the 2004 Series A Bonds will be secured by a first lien on the net revenues of the System, on a parity with the lien on the net revenues in favor of the holders of the Prior Bonds as defined in the Ordinance.

9. Provided that the rates and charges for the System shall always be sufficient to produce gross revenues to pay operating expenses and make payments into the funds and accounts created in the Ordinance and leave a balance each year equal to at least 115% of the maximum amount required in any year for the principal of and interest on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond including Prior Bonds; provided however, that so long as there exists in the Series 2004 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on this bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount at least equal to the requirements, therefore, such percentage may be reduced to 110%.

10. Provided that the System may be sold, transferred, mortgaged or leased only under certain terms and conditions; provided that the issuance of additional bonds on a parity with the Bonds may be authorized under certain terms and conditions.

11. Provided for insurance coverage on the System; provided that the City will render no free service; provided for the enforcement of collection of fees, rates, rentals or other charges for service; provided for mandatory connections under certain circumstances; and provided for the discontinuance of service for nonpayment of the fees, rates, rentals and others charges of the System.

12. Established that terms for defaults and the remedies of the owners of the Series 2004 A Bonds; provided for the security for and the rights and remedies of the owners of the Series 2004 A Bonds including the appointment of a receiver.

13. Provided that the City will take all actions that may be required of it so that the interest on the Series 2004 A Bonds will be and remain excluded from gross income for federal income tax pur-

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BOND,
SERIES 2004 A

No. AR- 1 $9,039,000

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF BECKLEY, a municipal corporation and political subdivision of the State of West Virginia in Raleigh 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 NINE MILLION THIRTY NINE THOUSAND DOLLARS ($9,039,000), 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 hereto as Exhibit A and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, beginning September 1, 2006, together with interest thereon at the rate of two percent (2%) per annum and an administrative fee of one percent (1%) per annum, which interest and administrative fee shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, beginning September 1, 2006, as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference.

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"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of J. P. Morgan Trust Company, National Association, Pittsburgh, Pennsylvania, as registrar (the "Registrar") on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection, dated September 16, 2004.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, improvements and betterments to the sewerage system facilities of the Issuer as further defined in the Ordinance authorizing the issuance of the Series 2004 A Bonds (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931,

as amended (the "Act"), and a Bond Ordinance and Supplemental Resolution, duly enacted and adopted, respectively, by the Issuer on July 23, 2004, and September 14, 2004 (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH THE SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1995 A, OF THE ISSUER (THE "SERIES 1995 A BONDS"), ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF $3,095,000, AND THE SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A, OF THE ISSUER (THE "SERIES 1998 A BONDS"), ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF $11,000,000, WITH RESPECT TO LIENS, PLEDGE AND SOURCES OF AND SECURITY FOR PAYMENT (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a first lien pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, which first lien is shared with the holders of the Prior Bonds, moneys in the Reserve Account created under the Bond Legislation for this Bond (the "Series 2004 A Bonds Reserve Account"), and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute 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 or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 2004 A Bonds Reserve Account and unexpended Bond proceeds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for principal of and interest on this Bond and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds; provided however, that so long as there exists in the Series 2004 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a

written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or its attorney duly authorized in writing.

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

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

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

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

IN WITNESS WHEREOF, the CITY OF BECKLEY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated September 28, 2004.

[SEAL]

Mayor

ATTEST:

SPECIMEN

Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the City of Beckley Sewerage System Revenue Bonds, Series 2004 A, 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: September 28, 2004

J. P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION, as Registrar

SPECIMEN

By: _____

Its: Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

Amount	Date
(1) $451,950	September 28, 2004

$9,039,000 **EXHIBIT B**

City of Beckley (West Virginia)

20 Years, 2% Interest Rate, 1% Administrative Fee

Closing Date: September 28, 2004

Net Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Expenses	Net New D/S
12/01/2004	-	-	-	-	-	-
03/01/2005	-	-	-	-	-	-
06/01/2005	-	-	-	-	-	-
09/01/2005	-	-	-	-	-	-
12/01/2005	-	-	-	-	-	-
03/01/2006	-	-	-	-	-	-
06/01/2006	-	-	-	-	-	-
09/01/2006	92,171.01	2.000%	45,195.00	137,366.01	22,597.50	159,963.51
12/01/2006	92,631.86	2.000%	44,734.14	137,366.00	22,367.08	159,733.08
03/01/2007	93,095.02	2.000%	44,270.99	137,366.01	22,135.50	159,501.51
06/01/2007	93,560.50	2.000%	43,805.51	137,366.01	21,902.76	159,268.77
09/01/2007	94,028.30	2.000%	43,337.71	137,366.01	21,668.86	159,034.87
12/01/2007	94,498.44	2.000%	42,867.57	137,366.01	21,433.79	158,799.80
03/01/2008	94,970.93	2.000%	42,395.07	137,366.00	21,197.54	158,563.54
06/01/2008	95,445.79	2.000%	41,920.22	137,366.01	20,960.11	158,326.12
09/01/2008	95,923.02	2.000%	41,442.99	137,366.01	20,721.50	158,087.51
12/01/2008	96,402.63	2.000%	40,963.38	137,366.01	20,481.69	157,847.70
03/01/2009	96,884.65	2.000%	40,481.36	137,366.01	20,240.69	157,606.70
06/01/2009	97,369.07	2.000%	39,996.94	137,366.01	19,998.47	157,364.48
09/01/2009	97,855.91	2.000%	39,510.09	137,366.00	19,755.05	157,121.05
12/01/2009	98,345.19	2.000%	39,020.81	137,366.00	19,510.41	156,876.41
03/01/2010	98,836.92	2.000%	38,529.09	137,366.01	19,264.55	156,630.56
06/01/2010	99,331.10	2.000%	38,034.90	137,366.00	19,017.46	156,383.46
09/01/2010	99,827.76	2.000%	37,538.25	137,366.01	18,769.13	156,135.14
12/01/2010	100,326.90	2.000%	37,039.11	137,366.01	18,519.56	155,885.57
03/01/2011	100,828.53	2.000%	36,537.48	137,366.01	18,268.74	155,634.75
06/01/2011	101,332.68	2.000%	36,033.33	137,366.01	18,016.67	155,382.68
09/01/2011	101,839.34	2.000%	35,526.67	137,366.01	17,763.34	155,129.35
12/01/2011	102,348.54	2.000%	35,017.47	137,366.01	17,508.74	154,874.75
03/01/2012	102,860.28	2.000%	34,505.73	137,366.01	17,252.87	154,618.88
06/01/2012	103,374.58	2.000%	33,991.43	137,366.01	16,995.72	154,361.73
09/01/2012	103,891.45	2.000%	33,474.56	137,366.01	16,737.28	154,103.29
12/01/2012	104,410.91	2.000%	32,955.10	137,366.01	16,477.55	153,843.56
03/01/2013	104,932.96	2.000%	32,433.04	137,366.00	16,216.53	153,582.53
06/01/2013	105,457.63	2.000%	31,908.38	137,366.01	15,954.19	153,320.20
09/01/2013	105,984.92	2.000%	31,381.09	137,366.01	15,690.55	153,056.56
12/01/2013	106,514.84	2.000%	30,851.17	137,366.01	15,425.59	152,791.60
03/01/2014	107,047.42	2.000%	30,318.59	137,366.01	15,159.30	152,525.31
06/01/2014	107,582.65	2.000%	29,783.35	137,366.00	14,891.68	152,257.68
09/01/2014	108,120.57	2.000%	29,245.44	137,366.01	14,622.73	151,988.74
12/01/2014	108,661.17	2.000%	28,704.84	137,366.01	14,352.42	151,718.43
03/01/2015	109,204.47	2.000%	28,161.53	137,366.00	14,080.77	151,446.77
06/01/2015	109,750.50	2.000%	27,615.51	137,366.01	13,807.76	151,173.77
09/01/2015	110,299.25	2.000%	27,066.76	137,366.01	13,533.38	150,899.39

$9,039,000

City of Beckley (West Virginia)
20 Years, 2% Interest Rate, 1% Administrative Fee
Closing Date: September 28, 2004

Net Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Expenses	Net New D/S
12/01/2015	110,850.75	2.000%	26,515.26	137,366.01	13,257.64	150,623.65
03/01/2016	111,405.00	2.000%	25,961.01	137,366.01	12,980.51	150,346.52
06/01/2016	111,962.02	2.000%	25,403.98	137,366.00	12,702.00	150,068.00
09/01/2016	112,521.83	2.000%	24,844.17	137,366.00	12,422.09	149,788.09
12/01/2016	113,084.44	2.000%	24,281.56	137,366.00	12,140.79	149,506.79
03/01/2017	113,649.87	2.000%	23,716.14	137,366.01	11,858.08	149,224.09
06/01/2017	114,218.12	2.000%	23,147.89	137,366.01	11,573.95	148,939.96
09/01/2017	114,789.21	2.000%	22,576.80	137,366.01	11,288.41	148,654.42
12/01/2017	115,363.15	2.000%	22,002.86	137,366.01	11,001.43	148,367.44
03/01/2018	115,939.97	2.000%	21,426.04	137,366.01	10,713.02	148,079.03
06/01/2018	116,519.67	2.000%	20,846.34	137,366.01	10,423.17	147,789.18
09/01/2018	117,102.27	2.000%	20,263.74	137,366.01	10,131.88	147,497.89
12/01/2018	117,687.78	2.000%	19,678.23	137,366.01	9,839.12	147,205.13
03/01/2019	118,276.22	2.000%	19,089.79	137,366.01	9,544.90	146,910.91
06/01/2019	118,867.60	2.000%	18,498.41	137,366.01	9,249.21	146,615.22
09/01/2019	119,461.94	2.000%	17,904.07	137,366.01	8,952.04	146,318.05
12/01/2019	120,059.25	2.000%	17,306.76	137,366.01	8,653.39	146,019.40
03/01/2020	120,659.54	2.000%	16,706.47	137,366.01	8,353.24	145,719.25
06/01/2020	121,262.84	2.000%	16,103.17	137,366.01	8,051.59	145,417.60
09/01/2020	121,869.15	2.000%	15,496.85	137,366.00	7,748.43	145,114.43
12/01/2020	122,478.50	2.000%	14,887.51	137,366.01	7,443.76	144,809.77
03/01/2021	123,090.89	2.000%	14,275.12	137,366.01	7,137.56	144,503.57
06/01/2021	123,706.35	2.000%	13,659.66	137,366.01	6,829.84	144,195.85
09/01/2021	124,324.88	2.000%	13,041.13	137,366.01	6,520.57	143,886.58
12/01/2021	124,946.50	2.000%	12,419.51	137,366.01	6,209.76	143,575.77
03/01/2022	125,571.23	2.000%	11,794.77	137,366.00	5,897.39	143,263.39
06/01/2022	126,199.09	2.000%	11,166.92	137,366.01	5,583.46	142,949.47
09/01/2022	126,830.09	2.000%	10,535.92	137,366.01	5,267.97	142,633.98
12/01/2022	127,464.24	2.000%	9,901.77	137,366.01	4,950.89	142,316.90
03/01/2023	128,101.56	2.000%	9,264.45	137,366.01	4,632.23	141,998.24
06/01/2023	128,742.07	2.000%	8,623.94	137,366.01	4,311.98	141,677.99
09/01/2023	129,385.78	2.000%	7,980.23	137,366.01	3,990.12	141,356.13
12/01/2023	130,032.70	2.000%	7,333.30	137,366.00	3,666.66	141,032.66
03/01/2024	130,682.87	2.000%	6,683.14	137,366.01	3,341.57	140,707.58
06/01/2024	131,336.28	2.000%	6,029.72	137,366.00	3,014.87	140,380.87
09/01/2024	131,992.96	2.000%	5,373.04	137,366.00	2,686.53	140,052.53
12/01/2024	132,652.93	2.000%	4,713.08	137,366.01	2,356.54	139,722.55
03/01/2025	133,316.19	2.000%	4,049.81	137,366.00	2,024.91	139,390.91
06/01/2025	133,982.77	2.000%	3,383.23	137,366.00	1,691.62	139,057.62
09/01/2025	134,652.69	2.000%	2,713.32	137,366.01	1,356.66	138,722.67
12/01/2025	135,325.95	2.000%	2,040.06	137,366.01	1,020.03	138,386.04
03/01/2026	136,002.58	2.000%	1,363.43	137,366.01	681.72	138,047.73
06/01/2026	136,682.59	2.000%	683.41	137,366.00	341.71	137,707.71
Total	**$9,039,000.00**	-	**$1,950,280.61**	**$10,989,280.61**	**$975,140.70**	**$11,964,421.31**

(Form of)

ASSIGNMENT

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

SPECIMEN

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: _____, ___.

In the presence of:

VAUGHAN LAW FIRM
Attorneys and Counsellors at Law

DENNIS R. VAUGHAN, JR.

WEST VIRGINIA MUNICIPAL LEAGUE CENTER
2020 KANAWHA BOULEVARD, EAST
CHARLESTON, WEST VIRGINIA 25311

TELEPHONE (304) 342-3900
TELECOPY (304) 344-2386

September 28, 2004

City of Beckley
P.O. Box 2514
Beckley, WV 25802

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: City of Beckley
Sewerage System Revenue Bonds, Series 2004 A

Ladies and Gentlemen:

We have served as bond counsel to the City of Beckley, West Virginia ("the Issuer"), a municipal corporation, in connection with the issuance of its Sewerage System Revenue Bonds, Series 2004 A, dated the date hereof (the "Bonds").

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a loan agreement for the Bonds dated September 16, 2004, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are issued in the principal amount of $9,039,000, in the form of one bond, registered as to principal and interest to the Authority, with interest at the rate of 2% per annum, and with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing September 1, 2006, as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds are subject to the SRF Administrative Fee equal to 1% of the principal amount of the Bonds as set forth in the Schedule Y attached to the Loan Agreement.

The Bonds are issued under the authority of and in full compliance with the Constitution and

statutes of the State of West Virginia, including particularly, Chapter 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and a Bond Ordinance duly passed by the Issuer on July 13, 2004, effective July 27, 2004, as supplemented by a Supplemental Resolution duly adopted by the Issuer on September 14, 2004 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued, and the Loan Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance and in the Loan Agreement when used herein.

In connection with the issuance of the Bonds, the Issuer has executed a Certificate as to Arbitrage, dated as of the date hereof (the "Certificate as to Arbitrage"), which, among other things, sets forth restrictions on the investment and expenditure of the Bond proceeds and earnings thereon, to ensure that the arbitrage requirements of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (collectively, the "Code"), necessary to establish and maintain the excludability of interest on the Bonds from gross income for federal income tax purposes, are and will continue to be met.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to enact the Ordinance and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer, enforceable in accordance with the terms thereof.

3. The Loan Agreement inures to the benefit of the Authority and the DEP and can not be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

4. The Issuer has legally and effectively enacted the Ordinance and adopted all other necessary resolutions in connection with the issuance and sale of the Bonds. The Ordinance constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Sewerage System Refunding Revenue Bonds, Series 1995 A, and Sewerage System Revenue Bonds, Series 1998 A, all in accordance with the terms of the Bonds and the Ordinance.

6. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Bonds (a) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to the Code and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations under the Code. It should be noted, however, that interest on the Bonds is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code that must be satisfied subsequent to issuance of the Bonds for interest thereon to be and continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Bonds set forth in the Bond Legislation and the Certificate as to Arbitrage, and other certificates delivered in connection with the issuance of the Bonds. The Issuer has covenanted to comply with all such requirements. Failure to comply with certain of such Code requirements or such certifications, covenants and representations could cause the interest on the Bonds to be includable in gross income retroactive to the date of issuance of the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Bonds.

7. Under the Act, the Bonds and any interest thereon are exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

No opinion is given herein as to the effect upon enforceability of the Bonds under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or in the exercise of judicial discretion or principles of equity in appropriate cases.

We have examined the executed and authenticated Bond numbered AR-1 and in our opinion, the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

Vaughan Law Firm

Vaughan Law Firm
By: D.R. Vaughan

BOND REGISTER

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 2004 A

Bond Number	Principal Amount	Date of Bond
No. AR-1	$9,039,000	September 28, 2004

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

West Virginia Water Development
Authority
180 Association Drive
Charleston, WV 25311

Signature of Registrar:

J. P. Morgan Trust Company,
National Association
One Oxford Centre, Suite 1100
301 Grant Street
Pittsburgh, PA 15219

Authorized Officer

Exhibit A - Loan Agreement
Schedule Y - Payment Schedule

THE CITY OF BECKLEY

SUPPLEMENTAL RESOLUTION

Supplemental Resolution providing for the dates, maturities, interest rates, principal payment schedules, sale prices and other terms of the Sewerage System Revenue Bonds, Series 1998 A, designating a registrar, paying agent and depository bank, approving the sale of the Sewerage System Revenue Bonds, Series 1998 A pursuant to a Loan Agreement and making other provisions as to such Bonds.

WHEREAS, the Common Council of The City of Beckley (the "Issuer"), on November 25, 1997, enacted an Ordinance, all as more fully set out therein (said Ordinance is hereinafter referred to as the "Ordinance"); and

WHEREAS, the Ordinance provides for the issuance of Sewerage System Revenue Bonds, Series 1997 A (which will hereinafter be referred to as the "Series 1998 A Bonds"), of the Issuer in aggregate principal amount not to exceed $11,000,000, all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and further provides that the dates, interest rates, maturities, sale prices and other terms of and matters relating to, the Series 1998 A Bonds should be established by supplemental resolution; and

WHEREAS, the Series 1998 A Bonds are proposed to be sold to the West Virginia Water Development Authority pursuant to a Loan Agreement (the "Loan Agreement"); and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Ordinance; and

WHEREAS, the Governing Body of the Issuer deems it essential and desirable that this resolution (the "Supplemental Resolution"), be adopted and that the prices, the maturity dates, the redemption provisions, the interest rates, and the interest and principal payment dates of the Series 1998 A Bonds be fixed hereby in the manner stated herein, that the Loan Agreement be ratified and approved and that other matters relating to the Bonds be herein provided for.

NOW THEREFORE, be it resolved by the City Council of The City of Beckley as follows:

Section 1. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewerage System Revenue Bonds, Series 1998 A, in the aggregate principal amount of $11,000,000 (the "Series 1998 A Bonds"), all in the form set forth in the Ordinance.

(A) The Series 1998 A Bonds of the Issuer shall be originally issued in the form of a single bond payable to the Authority, numbered AR-1, shall be in the principal amount of $11,000,000. The Series 1998 A Bonds shall be dated as of March 9, 1998, or as of the date of closing, and shall mature on March 1, 2020. The Series 1998 A Bonds shall bear interest at the rate

of 2% per annum, together with a 1% annual administrative fee, from March 1, 2000, until paid. Beginning June 1, 2000, the principal of and interest on the Series 1998 A Bonds shall be payable quarterly on June 1, September 1, December 1 and March 1 of each year, all as set forth on Schedule Y attached hereto.

(B) The sale of the Series 1998 A Bonds to the Authority, which is hereby designated as the Original Purchaser of the Series 1998 A Bonds, and the Loan Agreement dated January 29, 1998, in the form attached to this Resolution as Exhibit A is hereby ratified and approved. The Mayor is authorized and directed to execute and deliver the Loan Agreement with such changes and insertions as he may approve. The Mayor's signature on such Agreement shall be conclusive evidence of such approval.

Section 2. Except as herein provided, all other provisions relating to the Series 1998 A Bonds shall be as provided in the Ordinance, and the Series 1998 A Bonds shall be in substantially the form provided in the Ordinance with such changes, insertions and omissions as may be approved by the Mayor of the Issuer. The execution of the Series 1998 A Bonds by the Mayor shall be conclusive evidence of such approval.

Section 3. The Issuer hereby determines that the bank currently serving as the Depository Bank for the Sewerage System Revenue Fund, Bank One, West Virginia, Beckley, West Virginia, shall continue in that capacity.

Section 4. The Issuer hereby appoints and designates Bank One, West Virginia, National Association, Charleston, West Virginia, as Registrar for the Bonds.

Section 5. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, as Paying Agent for the Bonds.

Section 6. The Mayor and the Recorder of the Issuer are hereby authorized and directed to execute and deliver such other documents and certificates, including the Tax Regulatory Agreement and Registrar's Agreement, required or desirable in connection with the Series 1998 A Bonds in order for the Series 1998 A Bonds to be delivered to the Original Purchaser pursuant to the Loan Agreement.

Section 7. The Issuer shall not permit at any time or times any of the proceeds of the Series 1998 A Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code, by reason of the classification of the Series 1998 A Bonds as "private activity bonds" within the meaning of the Code. It will take all actions necessary to comply with the Code, including the Treasury Regulations to be promulgated thereunder.

Section 8. The Issuer hereby authorizes and directs the repayment, from the first disbursement made under the Loan Agreement the following items:

Payee	Purpose	Amount
Bank One, West Virginia	Repayment of Revenue	945,915.00

Vaughan & Withrow	Anticipation Notes Bond Counsel	15,000.00
Total		960,915.00

With respect to each item listed above, the Issuer hereby finds and represents:

(a) That none of the items for which payment is proposed to be made has been the basis for any disbursement heretofore made;
(b) That each item for which payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the services for the Project;
(c) That each of such cost has been otherwise properly incurred; and
(d) That the payment for each of the items proposed is now due and owing.

Section 9. This Supplemental Resolution shall be effective immediately upon adoption.

Adopted this 24th day of February, 1998.

Mayor

Recorder

I certify that the foregoing is a true and accurate copy of a Supplemental Resolution duly adopted by the Common Council of the City of Beckley at its regular meeting on February 24 ,1998. This Resolution is valid and in effect as of March 18, 1998.

Date:
3-18-98

Emmett S. Pugh III
Mayor
City of Beckley

CITY OF BECKLEY

SEWER SYSTEM REVENUE BONDS

SERIES 1997 A

BOND ORDINANCE

CITY OF BECKLEY

BOND ORDINANCE

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11/07/97

CITY OF BECKLEY

BOND ORDINANCE

AN ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND BETTERMENT TO THE PUBLIC SEWERAGE SYSTEM FACILITIES OF THE CITY OF BECKLEY AND THE FINANCING CERTAIN COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $11,000,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, SERIES 1997 A, PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT RELATING TO THE SERIES 1997 A 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 COMMON COUNCIL OF THE CITY OF BECKLEY:

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 adopted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law.

SECTION 1.02. FINDINGS.

It is hereby found, determined and declared that:

A. The City of Beckley (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Raleigh County of said State.

B. The Issuer presently owns and operates a public sanitary sewerage collection and treatment system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be designed and constructed certain additions, betterments and improvements for the existing sewerage facilities of the Issuer consisting of upgrading the existing Wastewater Treatment Plant, upgrading the Whitestick Pump Station, replacing the

existing Pinecrest Interceptor line and other various upgrades and repairs (the "Project") which constitute properties for the collection and treatment of wastewater (the existing sewerage system facilities of the Issuer, the Project and any further additions thereto or extensions thereof is herein called the "System") at an estimated cost of $10,300,000.00, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have been approved by the Issuer.

C. By ordinance enacted February 13, 1996, and effective March 12, 1996, the Issuer issued its Revenue Finance Anticipation Notes, Series 1996 A (the "Series 1996 A Notes"), in the principal amount of $1,500,000.00 to provide funds to finance temporarily the costs of the preliminary design of the Project.

D. The Issuer intends to issue its Sewerage System Revenue Bonds, Series 1997 A, in order to pay the costs of the Project, to pay the amount outstanding on the 1996 Series A Notes, to provide funds to reimburse itself for costs previously incurred and to pay the costs of issuance of the Series 1997 A Bonds

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

F. It is deemed necessary for the Issuer to issue its Sewerage System Revenue Bonds Series 1997 A in the total aggregate principal amount of not more than $11,000,000.00 (the "Series 1997 A Bonds"). The proceeds of the Series 1997 A Bonds will used to finance certain costs for the construction and acquisition of the Project, to repay the amount outstanding on the Series 1996 A Notes and to reimburse the Issuer for certain costs already incurred. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Bonds prior to and during construction or acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Reserve Accounts; 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 of the Authority (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition 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 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project, as hereinafter defined.

G. The Issuer intends to finance such costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority

ne "Authority") in connection with West Virginia Water Pollution Control Revolving Fund Program (the "SRF Program"), pursuant to the Act, in order to take advantage of the favorable terms available to the Issuer under the SRF Program.

H. The period of usefulness of the System after completion of the Project is not less than 20 years.

I. It is in the best interests of the Issuer that its Series 1997 A Bonds be sold to the Authority (as hereinafter defined) pursuant to the terms and provisions of a loan agreement to be entered into by and among the Issuer, the Authority and the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of the Environment ("DEP"), in form satisfactory to the Issuer, the Authority and the DEP, as shall be approved herein.

J. Other than the Series 1995 A Bonds, as defined herein, there is not outstanding any obligations of the Issuer which will rank prior to or on a parity with the Bonds as to lien and source of and security for payment. The Series 1995 A Bonds and the Series 1997 A Bonds shall be secured by a first lien on the revenues of the System, which lien shall be shared on a proportionate basis between each series of bonds.

K. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the bonds, or will have so complied prior to issuance of any thereof, including obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia.

L. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Council to issue the Series 1997 A Bonds for the purposes set forth herein.

M. The Project has been approved by the West Virginia Infrastructure and Jobs Development Counsel as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended, or is grandfathered from review thereby.

SECTION 1.03. BOND LEGISLATION CONSTITUTES CONTRACT.

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

SECTION 1.04. DEFINITIONS.

The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means Chapter 16, Article 13 and Chapter 22C, Article 2 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 of the Series 1997 A Bonds, or any other agency of the State of West Virginia that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor of the Issuer or any acting Mayor duly appointed by the Governing Body.

"Bond Construction Trust Fund" means the Bond Construction Trust Fund established by Section 4.01 hereof.

"Bondholder," "Holder of the Bonds," "Holder" 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.

"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.

"Bonds" means the Series 1995 A Bonds and the Series 1997 A and any bonds on a parity therewith authorized to be issued hereunder.

"Closing Date" means, with respect to the Series 1997 A Bonds, the date upon which there is an exchange of the Bonds for the proceeds representing the purchase of the Bonds by the Authority.

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

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

"Consulting Engineers" means Chapman Technical Group, St. Albans, West Virginia, or any engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

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

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

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

"DEP" means the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of the Environment.

"Excess Investment Earnings" means an amount equal to the sum of:

(A) The excess of

(i) The aggregate amount earned from the Closing Date on all Nonpurpose Investments in which Gross Proceeds of the Series 1997 A Bonds are invested [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings], over

(ii) The amount that would have been earned if the Yield on such Nonpurpose Investments [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings] had been equal to the Yield on the Series 1997 A Bonds, plus

(B) Any income attributable to the excess described in clause (A) of this definition of Excess Investment Earnings.

"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 Council of the Issuer, as it may hereafter be constituted.

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

"Gross Proceeds" means the sum of the following amounts:

(i) Original proceeds, namely, net amounts received by or for the Issuer as a result of the le of the Series 1997 A Bonds, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Series 1997 A Bonds;

(ii) Investment proceeds, namely, amounts received at any time by or for the Issuer, such as interest and dividends, resulting from the investment of any original proceeds (as referenced in clause (i) above) or investment proceeds (as referenced in this clause (ii)) in Nonpurpose Investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Series 1997 A Bonds;

(iii) Transferred proceeds, namely, original proceeds of any prior obligations, and interest earnings and profits less losses resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any prior bonds and which are deemed to become proceeds of the Series 1997 A Bonds, ratably as original proceeds of the Series 1997 A Bonds, and interest earnings and profits resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any such prior obligations, all on the date of such ratable discharge;

(iv) Sinking fund proceeds, namely, amounts, other than original proceeds, investment proceeds or transferred proceeds (as referenced in clauses (i) through (iii) above) of the Series 1997 A Bonds, which are held in any fund to the extent that the Issuer reasonably expects to use such other fund to pay Debt Service;

(v) Amounts in the Series 1997 A Bonds Reserve Account and in any other fund established as a reasonably required reserve or replacement fund;

(vi) Investment Property pledged as security for payment of Debt Service on the Series 1997 A Bonds by the Issuer;

(vii) Amounts, other than as specified in this definition, used to pay Debt Service on the Series 1997 A Bonds; and

(viii) Amounts received as a result of investing amounts described in this definition.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 7.01 hereof) or any tap fees.

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

"Independent Certified Public Accountants" shall mean 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.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes.

"Issuer" means The City of Beckley, in Raleigh County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreement" means the Loan Agreement to be entered into among the West Virginia Department of Environmental Protection, the Authority and the Issuer providing for the purchase of the Series 1997 A Bonds from the Issuer by the Authority, the forms of which shall be approved, and the execution and delivery by the Issuer authorized and directed by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 1997 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 1997 A Bonds Reserve Account. For purpose of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 1997 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

"Nonpurpose Investment" means any Investment Property which is acquired with the Gross Proceeds of the Bonds and is not acquired in order to carry out the governmental purpose of the Bonds.

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

capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"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 moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article IX hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 6.07 hereof.

"Paying Agent" means the West Virginia Municipal Bond Commission, as paying agent for the Series 1997 A Bonds.

"Prior Ordinance" means the ordinance enacted by the Council of the Issuer on June 14, 1994, effective June 28, 1994, as amended and supplemented by a Supplemental Resolution adopted April 3, 1995, pursuant to which the Series 1995 A Bonds were issued.

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

"Project" means the acquisition and construction of certain improvements and betterments to the Issuer's wastewater collection and treatment facilities of the Issuer, consisting of the upgrading the wastewater treatment plant and certain collection lines and lift stations within the jurisdiction of the Issuer, and all necessary appurtenances.

"Purchase Price," for the purpose of computation of the Yield of the Series 1997 A Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Series 1997 A Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Series 1997 A Bonds of each maturity is sold or, if the Series 1997 A Bonds are privately placed, the price paid by the first buyer of the Series 1997 A Bonds or the acquisition cost of the first buyer. "Purchase Price," for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Series 1997 A Bonds

acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose investment becomes a Nonpurpose Investment of the Series 1997 A Bonds.

"Qualified Investments" means and includes any of the following:

(a) Government Obligations;

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

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

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

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

(h) The West Virginia "consolidated fund" managed by the West Virginia State Board of Investments Pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended; and

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

"Recorder" means the Recorder of the Issuer.

"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 or Bonds is registered.

"Registrar" means the Bond Registrar.

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

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Section 4.01 of the Prior Ordinance.

"Revenue Fund" means the Revenue Fund established by Section 4.01 of the Prior Ordinance.

"Series 1995 A Bonds" means the $3,095,000.00 in aggregate principal amount of Sewerage System Refunding Revenue Bonds, Series 1995 A, of the Issuer issued pursuant to the Prior Ordinance, of which $3,055,000.00 are still outstanding.

"Series 1997 A Bonds" means the not more than $11,000,000.00 in aggregate principal amount of Sewerage System Revenue Bonds, Series 1997 A, of the Issuer issued pursuant to this Ordinance.

"Series 1995 A Bonds Reserve Account" means the Series 1995 A Bonds Reserve Account established in the Series 1995 A Bonds Sinking Fund pursuant to Section 4.02 of the Prior Ordinance.

"Series 1997 A Bonds Reserve Account" means the Series 1997 A Bonds Reserve Account established in the Series 1997 A Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 1995 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1995 A Bonds in the then current or any succeeding year.

"Series 1997 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1997 A Bonds in the then current or any succeeding year.

"Series 1995 A Bonds Sinking Fund means the Series 1995 A Bonds Sinking Fund established by Section 4.01 of the Prior Ordinance.

"Series 1997 A Bonds Sinking Fund means the Series 1997 A Bonds Sinking Fund established by Section 4.02 hereof.

"SRF Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement.

"SRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds from the State.

"SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

"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 resolutions authorizing the sale of the Series 1997 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 1997 A Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including the Renewal and Replacement Fund and the Reserve Accounts, the proceeds of which Bonds or other obligations are to be used to pay Costs of the Project.

"System" means the existing sewerage system facilities as expanded by the Project, and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with said sewerage system; and shall include any and all additions, extensions, improvements properties or other facilities at any time acquired or constructed for the System after completion of the Project.

"Yield" means that yield which, when used in computing the present worth of all payments of principal and interest (or other payments in the case of Nonpurpose Investments which require payments in a form not characterized as principal and interest) on a Nonpurpose

stment or on the Series 1997 A Bonds produces an amount equal to the Purchase Price of such Nonpurpose Investment or the Bonds, all computed as prescribed in applicable Regulations.

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.

ARTICLE II

AUTHORIZATION OF CONSTRUCTION AND ACQUISITION OF THE PROJECT

SECTION 2.01. AUTHORIZATION FOR THE CONSTRUCTION AND ACQUISITION OF THE PROJECT.

There is hereby authorized acquisition and construction of the Project in accordance with the plans and specifications prepared by the Consulting Engineers. The Project consists generally of upgrading the existing Wastewater Treatment Plant, upgrading the Whitestick Pump Station, replacing the existing Pinecrest Interceptor line and other various upgrades and repairs. The proceeds of the Bonds hereby authorized shall be applied as provided in Article V hereof.

It is estimated that the proposed construction will cost approximately $10,416,709.00, will consist of the following:

Construction	8,328,529.00
Engineering	1,112,790.00
Legal and Fiscal	30,000.00
Administrative	80,250.00
Interim Financing Costs	70,000.00
Bond Counsel for 1997 Bonds	57,000.00
Project Contingency	765,140.00
Total Project	10,416,709.00

The Issuer intends to pay the costs of the Project from the proceeds of the Series 1997 A Bonds.

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 SRF Program.

ARTICLE III

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

SECTION 3.01. AUTHORIZATION OF SERIES 1997 A BONDS.

For the purposes of paying certain Costs of the Project not otherwise provided for, repaying the Series 1996 A Notes issued to finance temporarily certain Costs and paying certain costs of issuance of the Series 1997 A Bonds and related costs, there shall be issued negotiable Series 1997 A Bonds of the Issuer, in an aggregate principal amount of not more than $11,000,000.00. Said Series 1997 A Bonds shall be issued as a single bond and designated as "Sewerage System Revenue Bonds, Series 1997 A." The Series 1997 A Bonds shall bear no interest until_____. From _____ the Series 1997 A Bonds shall bear interest at the rate of two percent (2%) per annum. There shall also be payable on the Series 1997 A Bonds a one percent (1%) administrative fee. The Series 1997 A Bonds shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 1997 A Bonds shall be deposited in the Bond Construction Trust Fund.

SECTION 3.02. TERMS OF THE SERIES 1997 A BONDS.

The Series 1997 A Bonds shall bear interest as set forth above; shall be payable and mature on such dates and in such amounts as set forth in Schedule Y attached hereto; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution, or as specifically provided in the Loan Agreement. The Series 1997 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. Interest on the Series 1997 A Bonds shall be paid by check or draft of the Paying Agent mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 1997 A Bonds shall be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 1997 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 1997 A Bonds shall be exchangeable at the option and expense of the Holder for other fully registered 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. The Bonds shall be dated as of the

ate specified in a supplemental resolution and shall bear interest from the date so specified herein.

SECTION 3.03. EXECUTION OF BONDS.

The Bonds shall be executed, either manually or by facsimile, in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the 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 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 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 forms set forth in Section 3.10 shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any 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 Bonds issued hereunder.

SECTION 3.05. NEGOTIABILITY, TRANSFER AND REGISTRATION.

Subject to the provisions for transfer of registration set forth below, the 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 any of said 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 any of the Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of the Bonds.

The registered 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

ırrender 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 Bonds or transferring the registered Bonds are exercised, 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. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the period commencing on the 15th day of the month preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

SECTION 3.06. BONDS MUTILATED, DESTROYED, STOLEN OR LOST.

In case any 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 and ·liver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, olen 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 1997 A Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided and amounts, if any, in the Series 1997 A Bonds Reserve Account. No holder or holders of any of the Series 1997 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1997 A Bonds or the interest thereon.

SECTION 3.08. BONDS SECURED BY PLEDGE OF NET REVENUES; SERIES 1997 A BONDS TO BE ON PARITY WITH THE SERIES 1995 A BONDS.

The payment of the debt service of all the Series 1995 A Bonds and Series 1997 A Bonds shall be secured forthwith equally and ratably with each other, by a first lien on the Net Revenues

derived from the System, which first lien shall be shared prorata among all the above described indebtedness. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments into the Sinking Funds, the Reserve Accounts therein and the Renewal and Replacement Fund hereinafter established, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

SECTION 3.09. DELIVERY OF BONDS.

The Issuer shall execute and deliver the Series 1997 A Bonds to the Bond Registrar, and the Registrar shall authenticate, register and deliver the Bonds to the original purchasers thereof upon receipt of the documents set forth below:

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

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

C. The unqualified approving opinion of bond counsel on the Bonds.

SECTION 3.10. FORM OF BONDS.

The text of the Bonds shall be in substantially the following forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[Form of Series 1997 A Bond]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BOND
SERIES 1997 A

No. AR-__ $_____

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF BECKLEY, a municipal corporation and political subdivision of the State of West Virginia in Raleigh 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

hority (the "Authority") or registered assigns the sum of _____ ollars ($_____), 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 hereto as Exhibit A and incorporated herein by reference, together interest thereon at the rate of two percent (2%) per annum and an administrative fee of one percent (1%) per annum, which interest and administrative fee shall begin to accrue _____, in installments on March 1, June 1, September 1 and December 1 of each year, beginning _____, as set forth on the "Schedule of Annual Debt Service" attached as Exhibit B hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Exhibit B.

The interest rate on each installment shall run from _____, and shall be payable on March 1, June 1, September 1 and December 1 of each year, beginning _____, as shown on the aforesaid Schedule. 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"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of _____, West Virginia, as registrar (the "Registrar") on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and among the Issuer, the Authority and the West Virginia Division of Environmental Protection, dated _____, 1997.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, improvements and betterments to the sewerage system facilities of the Issuer (the "Project"); (ii) to pay the amount outstanding on the Series 1996 A Notes issued to pay temporarily certain preliminary costs of the Project; and (iii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance and Supplemental Resolution, duly enacted and adopted, respectively, by the Issuer on _____, 1997, and _____, 1997, (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH THE SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 1995 A OF THE ISSUER (THE "SERIES 1995 A BONDS"), ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF $3,095,000, WITH

RESPECT TO LIENS AND SOURCES OF AND SECURITY FOR PAYMENT OF EACH RESPECTIVE SERIES OF BONDS.

This Bond is payable only from and secured by a first lien pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, , which first lien is shared with the holders of the Series 1995 A Bonds, moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1997 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute 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 or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 1997 A Bonds Reserve Account and unexpended Bond proceeds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount required in any year for principal of and interest on the Series 1997 A Bonds and the Series 1995 A Bonds, and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 1997 A Bonds or the Series 1995 A Bonds, provided however, that so long as there exists in the Series 1997 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Series 1997 A Bonds in the then current or any succeeding year, and in the respective reserve accounts established for the Series 1995 A Bonds and any other obligations outstanding prior to or on a parity with the Series 1997 A Bonds or the Series 1995 A Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation, and there shall be and

hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond.

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

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

IN WITNESS WHEREOF, THE CITY OF BECKLEY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated _____, 1997.

[SEAL]

_____
Mayor

ATTEST:

_____
Recorder

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of The City of Beckley Sewerage System Revenue Bonds, Series 1997 A, 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: _____

_____,

as Registrar

By _____
Its Authorized Officer

EXHIBIT A

SCHEDULE OF ADVANCES

Amount	Date

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

Date	Amount

(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: _____, ___.

_____

In the presence of:

_____

SECTION 3.11. SALE OF SERIES 1997 A BONDS; RATIFICATION OF EXECUTION OF LOAN AGREEMENT WITH AUTHORITY.

The Series 1997 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 Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof and the Recorder 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, ratified and approved.

SECTION 3.12. "AMENDED SCHEDULE A" FILING.

Upon completion of acquisition and construction of the Project, the Issuer will file with the Authority a schedule substantially in the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funding therefor.

ARTICLE IV

SYSTEM REVENUES AND APPLICATION THEREOF

SECTION 4.01. CONTINUATION OR ESTABLISHMENT OF FUND AND ACCOUNTS WITH DEPOSITORY BANK.

The following special funds or accounts are hereby continued or created with and shall be held by, the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

(1) Revenue Fund;

(2) Renewal and Replacement Fund; and

(3) Bond Construction Trust Fund.

SECTION 4.02. CONTINUATION OR ESTABLISHMENT OF FUNDS AND ACCOUNTS WITH COMMISSION.

The following special funds or accounts are hereby continued or established with the Commission:

(1) Series 1995 A Bonds Sinking Fund;

(a) Within the Series 1995 A Bonds Sinking Fund, the Series 1995 A Bonds Reserve Account.

(2) Series 1997 A Bonds Sinking Fund;

(a) Within the Series 1997 A Bonds Sinking Fund, the Series 1997 A Bonds Reserve Account.

SECTION 4.03. SYSTEM REVENUES; FLOW OF FUNDS.

A. The entire Gross Revenues derived from the operation of the System 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 herein provided.

(1) The Issuer shall, each month, pay from the Revenue Fund, all current Operating Expenses of the System.

(2) (a) From the moneys remaining in the Revenue Fund, the Issuer shall next commencing 6 months prior to the first date of payment of interest on the Series 1995 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Series 1995 A Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on said Series 1995 A Bonds on the next ensuing semi-annual interest payment date; provided, that, in the event the period to elapse between the date of such initial deposit in the Series 1995 A Bonds Sinking Fund and the next semi-annual interest payment date is less than 6 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next semi-annual interest payment date, the required amount of interest coming due on such date.

(b) Simultaneously, the Issuer shall, commencing 12 months prior to the first date payment of principal on the Series 1995 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1995 A Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Series 1995 A Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1995 A Bonds Sinking Fund and the next annual principal payment date is less than 12 months then such monthly payments shall be increased proportionately to provide, one month prior to the next annual principal payment date, the required amount of principal coming due on such date.

(c) Simultaneously, the Issuer shall, commencing 3 months prior to the first date of payment of interest on the Series 1997 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Series 1997 A Bonds Sinking Fund, a sum equal to 1/3rd of the amount of interest which will become due on said Series 1997 A Bonds on the next ensuing quarterly interest payment date; provided, that, in the event the period to elapse between the date of such initial deposit in the Series 1997 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(d) Simultaneously, the Issuer shall, commencing 3 months prior to the first date of payment of principal on the Series 1997 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1997 A Bonds Sinking Fund, a sum equal to 1/3rd of the amount of principal which will mature and become due on said Series 1997

Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1997 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

In the event there is insufficient money in the Revenue Fund to make the payments described in this paragraph above, the Issuer shall use the available moneys and make the payments provided for on a prorata basis.

(3) Thereafter, the Issuer shall, commencing 3 months prior to the first date of payment of principal of the Series 1997 A Bonds apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1997 A Bonds Reserve Account, an amount equal to 1/120th of the Series 1997 A Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1997 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 1997 A Bonds Reserve Requirement.

(4) From the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, commencing with the month succeeding the first full calendar month after completion of the Project, transfer to the Renewal and Replacement Fund a sum equal to 2½% of the Gross Revenues each month, exclusive of any payments for account of the Series 995 A Bonds Reserve Account or the Series 1997 A Bonds Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Series 1995 A Bonds Reserve Account or the Series 1997 A Bonds Reserve Account [except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required by Subsection 4.03(A)(2)(d)] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Series 1995 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the respective Series 1995 A Bonds as the same shall become due. Moneys in the Series 1995 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 1995 A Bonds, as the same shall come due, when other moneys in the Sinking Fund are insufficient therefor, and for no other purpose.

Moneys in the Series 1997 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the respective Series 1997 A Bonds as the same shall become due. Moneys in the Series 1997 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 1997 A Bonds, as the same shall come due, when other moneys in the Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Sinking Fund and respective Reserve Accounts shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Bond Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Series 1997 A Bonds Sinking Fund and applied to the next ensuing interest payments, if any, due on the Series 1997 A Bonds, and then to the next ensuing principal payments due thereon.

Any withdrawals from the Series 1995 A Bonds Reserve Account which result in a reduction in the balance of the Series 1995 A Bonds Reserve Account to below the Series 1995 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments set forth in Section 4.03(A)(2) above have been made in full.

Any withdrawals from the Series 1997 A Bonds Reserve Account which result in a reduction in the balance of the Series 1997 A Bonds Reserve Account to below the Series 1997 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments set forth in Section 4.03(A)(2) above have been made in full.

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the respective Sinking Fund sufficient to pay the nterest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate Reserve Account in an amount equal to the maximum provided and required to be paid into the concomitant Sinking Fund in any year for account of the Bonds of such series, including such additional Bonds which by their terms are payable from such Sinking Fund.

The Issuer shall not be required to make any further payments into the Series 1995 A Bonds Sinking Fund or into the Reserve Account therein when the aggregate amount of funds in said Series 1995 A Bonds Sinking Fund and Reserve Account are at least equal to the aggregate principal amount of the Series 1995 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

The Issuer shall not be required to make any further payments into the Series 1997 A Bonds Sinking Fund or into the Reserve Account therein when the aggregate amount of funds in said Series 1997 A Bonds Sinking Fund and Reserve Account are at least equal to the aggregate principal amount of the Series 1997 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

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

The payments into the Sinking Fund shall be made on the first day of each month, except hat when the first day of any month shall be a Sunday or legal holiday then such payments shall

e made on the next succeeding business day, 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.

Moneys in the respective Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 7.01 hereof.

The Series 1997 A Bonds Sinking Fund, including the Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1997 A Bonds and any additional Bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

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

C. The Issuer shall complete the "Monthly Payment Form," a copy of which is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its check to the Authority by the 5th day of each calendar month.

D. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar or the Depository Bank, on such dates as the Commission, the Registrar or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay the Depository Bank's charges then due. The Issuer shall also remit from the Revenue Fund to the Authority, on such dates as the Authority shall require, the Issuer's allocable share of reasonable administrative expenses, if any, incurred by the Authority with respect to the SRF Program.

E. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund 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. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates.

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

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

I. The Issuer shall each month on the day set forth in Section 4.03A(2) hereof, and if ch day is not a business day, then the next succeeding business day), deposit with the Commission the SRF Administrative Fee as set forth in Schedule Y attached to the Loan Agreement.

ARTICLE V

BOND PROCEEDS; FUNDS AND ACCOUNTS

SECTION 5.01. APPLICATION OF SERIES 1997 A BOND PROCEEDS; PLEDGE OF UNEXPENDED BOND PROCEEDS.

The moneys received from the sale of the Series 1997 A Bonds, as requisitioned by the Issuer, shall be deposited in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 5.02.

The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in the Bond Legislation. Moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so expended, are hereby pledged as additional security for the Series 1997 A Bonds.

SECTION 5.02. DISBURSEMENTS FROM THE BOND CONSTRUCTION TRUST FUND.

On or before the Closing Date, the Issuer shall have delivered to the DEP and the Authority a report listing the specific purposes for which the proceeds of the Series 1997 A Bonds will be expended and the disbursement procedures for such proceeds, including a estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 5.01 hereof, disbursements from the Bond Construction Trust Fund shall be made only after submission to, and approval from the Authority and DEP of the following:

(1) a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement as Exhibit C, and

(1) a certificate signed by an Authorized Officer and the Consulting Engineers, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

(B) That 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;

(C) That each of such costs has been otherwise properly incurred; and

(D) That payment for each of the items proposed is then due and owing, or that Issuer or the Sanitary Board has previously paid such item in connection with the Project is being reimbursed for such payment.

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Bond Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Bond Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Bond Construction Trust Fund. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Bond Construction Trust Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

After completion of the Project, as certified by the Consulting Engineers, the Depository Bank shall transfer any moneys remaining in the Bond Construction Trust Fund to the Series 1997 A Bonds Reserve Account, and when fully funded, shall apply such remaining moneys as directed by the Authority.

ARTICLE VI

ADDITIONAL COVENANTS OF THE ISSUER

SECTION 6.01. 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 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 Bonds as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon is Outstanding and unpaid.

SECTION 6.02. BONDS NOT TO BE INDEBTEDNESS OF THE ISSUER.

The Bonds shall not be nor constitute an 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. No Holder or Holders of any

ıds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay ..ıd Bonds or the interest thereon.

SECTION 6.03. BONDS SECURED BY PLEDGE OF NET REVENUES.

The payment of the debt service of the Series 1997 A Bonds issued hereunder and Series 1995 A Bonds heretofore issued shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System. The revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds and to make the payments into the Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds as the same become due, and for the other purposes provided in the Bond Legislation.

SECTION 6.04. INITIAL SCHEDULE OF RATES AND CHARGES.

The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the ordinance of the Issuer enacted September 23, 1997.

SECTION 6.05. SALE OF THE SYSTEM.

Except as otherwise required by law, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds Outstanding, or to effectively defease this Bond Legislation in accordance with Section 9.01 hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Bonds, immediately be remitted to the Commission for deposit in the Sinking Funds, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Bonds. Any balance remaining after the payment of all the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $25,000, the Sanitary Board shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall deposited in the Renewal and Replacement Fund. If the amount to be received from such ıle, 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 $25,000 but not in excess of $50,000, the Sanitary Board shall first, in writing determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of $25,000 and not in excess of $50,000, shall with the written consent of the Authority, be remitted by the Issuer to the Commission for deposit in the Sinking Fund and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the par value thereof plus 3% of such par value or otherwise. Such payment of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said 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 $50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 50% in amount of the Bonds then Outstanding and the Consulting Engineers. 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 6.06. ISSUANCE OF OTHER OBLIGATIONS PAYABLE OUT OF REVENUES AND GENERAL COVENANT AGAINST ENCUMBRANCES.

Except as provided in this Section 6.06 and in Section 6.07B, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; provided, however, that additional Bonds on a parity with the Bonds may be issued as provided for in Section 6.07 hereof. All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 1995 A Bonds and the Series 1997 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the Sinking Funds, Reserve Accounts and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

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

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System from any grants for the Project, or any other obligations related to the Project or the System.

SECTION 6.07. PARITY BONDS.

A. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this Bond Legislation, except under the conditions and in the manner herein provided and with the written consent of the Authority and the DEP.

So long as the Series 1995 A Bonds are outstanding, no parity bonds shall issued except in conformity with the requirements of both the ordinance authorizing the Series 1995 A Bonds and this Ordinance.

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

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Authority and the Bank a written statement by the Independent Certified Public ountants, based upon the necessary investigation and certification by the Consulting gineers, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

(1) The Bonds then Outstanding;

(2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and

(3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates adopted by the Issuer, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Consulting Engineers and the said Independent Certified Public Accountants, as stated in a certificate jointly made and signed by the Consulting Engineers and said Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the period for appeal of which has expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate construction or acquisition of such additions, betterments or improvements, if any, to the System that are to be financed by such Parity Bonds.

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

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Series 1997 A Bonds and the Series 1995 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 1997 A Bonds or the Series 1995 A Bonds.

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

SECTION 6.08. BOOKS AND RECORDS.

The Issuer shall keep complete and accurate records of the cost of acquiring the Project Site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP, 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 DEP such documents and information as they may reasonably require in connection with the acquisition, construction

ıd installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing System, at any reasonable time following commencement of construction.

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

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

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

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

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

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

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to the Authority and DEP, or any other original purchaser of the Bonds. Such audit report submitted to the Authority and DEP shall include a statement that the Issuer is in compliance with the terms and provisions of the Loan Agreement and this Bond Legislation.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for 2 years following completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement as Exhibit B, and forward a copy to the Authority and DEP by the 10th day of each month.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the Loan Agreement or as promulgated from time to time.

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

SECTION 6.09. RATES.

So long as the Series 1995 A Bonds are outstanding, the City shall maintain rates and charges for the use of the System consistent with the requirements of the ordinance authorizing the issuance of such bonds.

Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds; provided that, in the event an amount equal to or in excess of the Reserve Requirement is on deposit in the Reserve Account and reserve accounts for obligations prior to or on a parity with the Bonds are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds. In any event, subject to any requirements of law, the Issuer shall not reduce the rates and charges for services set forth in the rate ordinance lescribed in the Section 6.04 hereof.

SECTION 6.10. OPERATING BUDGET AND AUDIT.

The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and DEP within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and to any Holder of any Bonds, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

SECTION 6.11. NO COMPETING FRANCHISE.

To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

SECTION 6.12. ENGINEERING SERVICES AND OPERATING PERSONNEL.

The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing 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 resident engineer shall certify to the Authority, the DEP and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance

rtificate," a form of which is attached to the Loan Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed.

The Issuer agrees that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 25% completion stage.

SECTION 6.13. ENFORCEMENT OF COLLECTIONS.

The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules of the Issuer, 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 and any services and facilities of the water system, if so owned by the Issuer, 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 of either system 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, or, if the waterworks facilities are not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

The Issuer further acknowledges that it has a water termination agreement with Beckley Water Company and will maintain and use such agreement subject to all the rules, regulations and orders of the Public Service Commission.

SECTION 6.14. NO FREE SERVICES.

The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

SECTION 6.15. INSURANCE AND CONSTRUCTION BONDS.

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

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

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than $1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than $100,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) 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 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 the extent available at reasonable cost to the Issuer.

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

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

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

The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount at least 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.

SECTION 6.16. COMPLETION OF PROJECT.

The Issuer will complete the Project as promptly as possible and operate and maintain the System in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project, and all orders and approvals from the Public Service Commission of West Virginia necessary for the acquisition and construction of the Project and the operation of the System.

SECTION 6.17. TAX COVENANTS.

The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Bonds during

ıe term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project; or if the Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of 5% of the Net Proceeds of the Series 1997 A Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 1997 A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 1997 A Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including those deemed necessary by the Authority) so that the interest on the Series 1997 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including those determined by the Authority) which would adversely affect such exclusion.

SECTION 6.18. MANDATORY CONNECTIONS.

The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of vage and water-borne waste matter produced or arising within the territory served by the ystem. Accordingly, every owner, tenant or occupant of any house, dwelling or building

ated near the System, where sewage will flow by gravity or be transported by such other thods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State of West Virginia and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

SECTION 6.19. COMPLIANCE WITH LOAN AGREEMENT AND LAW.

The Issuer agrees to comply with all the terms and conditions of the Loan Agreement. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with copies of all documents submitted to the Authority.

The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the DEP or other State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

ARTICLE VII

INVESTMENT OF FUNDS; NON ARBITRAGE

SECTION 7.01. INVESTMENTS.

Any moneys 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 moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 7.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss lized from such investment shall be credited or charged to the appropriate fund or account.

The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, 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 Bonds are Outstanding.

SECTION 7.02. ARBITRAGE.

The Issuer covenants that (i) it will restrict the use of the proceeds of the Series 1997 A Bonds in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Series 1997 A Bonds, so that the Series 1997 A Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Series 1997 A Bonds) so that the interest on the Series 1997 A Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

SECTION 7.03. REBATE OF EXCESS INVESTMENT EARNINGS TO THE UNITED STATES.

In accordance with the rebate requirements of Section 148(f) of the Code, the Issuer shall take the following actions:

A. CREATION OF FUNDS. There are hereby created, to be held by the Depository Bank as separate funds distinct from all other funds and accounts held by the Depository Bank under this Bond Legislation, the Earnings Fund and the Rebate Fund. All interest earnings and profits on amounts in all funds and accounts established under this Bond Legislation, other than (i) interest earnings and profits on any funds referenced in Subsection C(5) of this Section if such earnings in any Bond Year are less than $100,000, (ii) interest earnings and profits on amounts in funds and accounts which do not constitute Gross Proceeds, and (iii) interest earnings and profits on the Rebate Fund shall, upon receipt by the Depository Bank, be deposited in the Earnings Fund. In addition, all interest earnings and profits on Gross Proceeds in funds held by the Issuer shall, upon receipt, be paid to the Depository Bank for deposit in the Earnings Fund. Annually, on or before the 30th day following the end of each Bond Year or on the preceding business day

In the event that such last day is not a business day, or such earlier date as may be required under the Code, the Depository Bank shall transfer from the Earnings Fund to the Rebate Fund for purposes of ultimate payment to the United States an amount equal to Excess Investment Earnings, all as more particularly described in this Section. Following the transfer referenced in the preceding sentence, the Depository Bank shall transfer all amounts remaining in the Earnings Fund to be used for the payment of Debt Service on the next interest payment date and for such purpose, Debt Service due from the Issuer on such date shall be credited by an amount equal to the amount so transferred.

B. DUTIES OF ISSUER IN GENERAL. The Issuer shall calculate Excess Investment Earnings in accordance with Subsection C and shall assure payment of an amount equal to Excess Investment Earnings to the United States in accordance with Subsections D and E.

C. CALCULATION OF EXCESS INVESTMENT EARNINGS. Within 15 days following the last day of the first Bond Year, the Issuer shall calculate, and shall provide written notice to the Authority and Depository Bank of, the Excess Investment Earnings referenced in clause (A) of the definition of Excess Investment Earnings. Thereafter, within 15 days following the last day of each Bond Year and within 15 days following the date of the retirement of the Bond, the Issuer shall calculate, and shall provide written notice to the Authority and Depository Bank of, the amount of Excess Investment Earnings. Said calculations shall be made or caused to be made by the Issuer in accordance with the following:

(1) Except as provided in (2), in determining the amount described in clause A(i) the definition of Excess Investment Earnings, the aggregate amount earned on Nonpurpose Investments shall include (i) all income realized under federal income tax accounting principles (whether or not the person earning such income is subject to federal income tax) with respect to such Nonpurpose Investments and with respect to the reinvestment of investment receipts from such Nonpurpose Investments (without regard to the transaction costs incurred in acquiring, carrying, selling or redeeming such Nonpurpose Investments), including, but not limited to, gain or loss realized on the disposition of such Nonpurpose Investments (without regard to when such gains are taken into account under Section 453 of the Code relating to taxable year of inclusion of gross income), and income under Section 1272 of the Code (relating to original issue discount) and (ii) any unrealized gain or loss as of the date of retirement of the Bonds in the event that any Nonpurpose Investment is retained after such date.

(2) In determining the amount described in clause (A) of the definition of Excess Investment Earnings, Investment Property shall be treated as acquired for its fair market value at the time it becomes a Nonpurpose Investment, so that gain or loss on the disposition of such Investment Property shall be computed with reference to such fair market value as its adjusted basis.

(3) In determining the amount described in clause (A)(ii) of the definition of Excess Investment Earnings, the Yield on the Bonds shall be determined based on the actual Yield of the Bonds during the period between the Closing Date of the Bonds and the date the computation is made (with adjustments for original issue discount or premium).

(4) In determining the amount described in clause (B) of the definition of Excess Investment Earnings, all income attributable to the excess described in clause (A) of said definition must be taken into account, whether or not that income exceeds the Yield of the Bond, and no amount may be treated as "negative arbitrage."

(5) In determining the amount of Excess Investment Earnings, there shall be excluded any amount earned on any fund or account which is used primarily to achieve a proper matching of revenues and Debt Service within each Bond Year and which is depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1 year's earnings on such fund or account or 1/12th of annual Debt Service as well as amounts earned on said earnings if the gross earnings on such fund or account for the Bond Year is less than $100,000.

D. PAYMENT TO THE UNITED STATES. The Issuer shall direct the Depository Bank to pay from the Rebate Fund an amount equal to Excess Investment Earnings to the United States in installments with the first payment to be made not later than 30 days after the end of the 5th Bond Year and with subsequent payments to be made not later than 5 years after the preceding payment was due. The Issuer shall assure that each such installment is in an amount equal to at least 90% of the Excess Investment Earnings with respect to the Gross Proceeds as of the close of the computation period. Not later than 60 days after the retirement of the Bonds, the Issuer shall direct the Depository Bank to pay from the Rebate Fund to the United States 100% of the theretofore unpaid Excess Investment Earnings in the Rebate Fund. In the event that there are any amounts remaining in the Rebate Fund following the payment required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required by this Subsection D, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor.

In the event of a failure to pay any such amount or amounts, the Issuer will pay, from any lawful sources available therefor, to the United States, an amount equal to the sum of 50% of the amount not paid, plus interest at the required rate on the portion of the amount which was not paid on the required date, beginning on such date, unless waived.

E. FURTHER OBLIGATIONS OF ISSUER. The Issuer shall assure that Excess Investment Earnings are not paid or disbursed except as required in this Section. To that end the Issuer shall assure that investment transactions are on an arm's length basis and that Nonpurpose Investments are acquired at their fair market value. In the event that Nonpurpose Investments consist of certificates of deposit or investment contracts, investment in such Nonpurpose Investments shall be made in accordance with the procedures described in applicable Regulations as from time to time in effect. The Depository Bank shall keep the moneys in the Earnings Fund and Rebate Fund invested and reinvested to the fullest extent practicable in Government Obligations with maturities consonant with the required use thereof and investment profits and earnings shall be credited to the account of such fund on which earned.

F. MAINTENANCE OF RECORDS. The Issuer shall keep and retain for a period of 6 years following the retirement of the Bonds, records of the determinations made pursuant to this Section 7.03.

G. INDEPENDENT CONSULTANTS. In order to provide for the administration of this Section 7.03, the Issuer and the Depository Bank (at the expense of the Issuer) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer or the Depository Bank may deem appropriate.

H. FURTHER AGREEMENT. Notwithstanding the foregoing, the Issuer further covenants to comply with all Regulations from time to time in effect and applicable to the Bonds, as may be necessary in order to fully comply with Section 148(f) of the Code.

I. REPORTING TO AUTHORITY. The Issuer shall furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information as may be requested by the Authority, including, without limitation, information with respect to earnings on all funds constituting "gross proceeds" of the Series 1997 A Bonds (as such term "gross proceeds" is defined in the Code). In addition, the Issuer shall cooperate with the authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

SECTION 7.04. SECURITIES LAWS COMPLIANCE.

The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual 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).

ARTICLE VIII

DEFAULT AND REMEDIES

SECTION 8.01. EVENTS OF DEFAULT.

Each of the following events shall constitute an "Event of Default" with respect to the Series 1997 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 1997 A Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 1997 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 1997 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, Registrar 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 8.02. REMEDIES.

Upon the happening and continuance of any Event of Default, any Registered Owner of 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 principal or interest then due, (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 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 Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners.

SECTION 8.03. APPOINTMENT OF RECEIVER.

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

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

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

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

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

ARTICLE IX

DEFEASANCE

SECTION 9.01. DEFEASANCE OF SERIES 1997 A BONDS.

If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1997 A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 1997 A Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1997 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1997 A Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agents at the same or

er time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Series 1997 A Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1997 A Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 1997 A Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1997 A Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE X

MISCELLANEOUS

SECTION 10.01. AMENDMENT OR MODIFICATION OF BOND LEGISLATION.

No material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Bonds shall be made without the consent in writing of the Registered Owners of 66-2/3% or more in principal amount of the Series 1997 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications. 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 on the Bonds from gross income of the holders thereof.

SECTION 10.02. BOND LEGISLATION CONSTITUTES CONTRACT.

The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the 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 10.03. 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 Bonds.

SECTION 10.04. 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 10.05. 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, except for the provisions of the Ordinance enacted June 14, 1994, as amended and supplemented by a resolution adopted April 3, 1995, to the extent such provisions affect the Series 1995 A Bonds.

SECTION 10.06. COVENANT OF DUE PROCEDURE, ETC.

The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the enactment of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, Recorder and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

SECTION 10.07. EFFECTIVE DATE.

This Ordinance shall take effect immediately following public hearing hereon.

SECTION 10.08. STATUTORY NOTICE AND PUBLIC HEARING.

Upon adoption hereof, an abstract of this Bond Legislation 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 Register Herald, which is a qualified newspaper of general circulation in The City of Beckley, together with a notice stating that this Bond Legislation has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the City Council upon a date certain, not less than ten days subsequent to the date of the first publication of the abstract and notice, and present protests, and that a certified copy of the 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.

Passed on First Reading - 11-11-97

Passed on Second Reading - 11-25-97

Effective Date Following
Public Hearing - _____

Mayor

Recorder

I certify that the foregoing is a certified copy of an Ordinance duly adopted by the Common Council of the City of Beckley at its regular meeting on November 25, 1997.

Date:

3-18-98

Emmett S. Pugh III
Mayor
City of Beckley

Supplemental Resolution providing for the dates, maturities, interest rates, principal payment schedules, sale prices and other terms of the Sewerage System Refunding Revenue Bonds, Series 1995A, designating a registrar, paying agent and depository bank, approving the sale of the Sewerage System Refunding Revenue Bonds, Series 1995A pursuant to a Bond Purchase Agreement and making other provisions as to such Bonds.

WHEREAS, the Council of The City of Beckley, West Virginia (the "Council"), on June 14, 1994, adopted an Ordinance, all as more fully set out therein; (said Ordinance is hereinafter referred to as the "Ordinance"); and

WHEREAS, the Ordinance provides for the issuance of Sewerage System Refunding Revenue Bonds, Series 1995A (the "Series 1995A Bonds"), of the City in aggregate principal amounts not to exceed $3,500,000, all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and further provides that the dates, interest rates, maturities, sale prices and other terms of and matters relating to, the Series 1995A Bonds should be established by supplemental resolution; and

WHEREAS, the Series 1995A Bonds are proposed to be sold to the Original Purchasers (as defined in the Ordinance) pursuant to a Bond Purchase Agreement (the "Purchase Agreement"); and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Ordinance; and

WHEREAS, the City Council (the "Council") of the City deems it essential and desirable that this resolution (the "Supplemental Resolution"), be adopted and that the prices, the maturity dates, the redemption provisions, the interest rates, and the interest and principal payment dates of the Series 1995A Bonds be fixed hereby in the manner stated herein, that the Purchase Agreement be approved, that distribution of the Prelinmary Official Statement shall be ratified and approved, that the Official Statement shall be approved, and that other matters relating to the Bonds be herein provided for.

NOW THEREFORE, be it resolved by the Council of The City of Beckley, West Virginia, as follows:

Section 1. All references in the Ordinance to Series 1994 A Bonds, shall be deemed to refer to the Series 1995 A Bonds, authorized and approved in this Supplemental Resolution.

Section 2. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewerage System

Refunding Revenue Bonds, Series 1995A, in the aggregate principal amount of $3,095,000 (the "Series 1995A Bonds"), all in the form set forth in the Ordinance:

(A) The Series 1995A Bonds of the City shall be originally issued in the book-entry form of a single bond for each year of maturity, numbered consecutively AR-1 and upwards, shall be in the aggregate principal amount of $3,095,000. The Series 1995A Bonds shall be dated as of April 1, 1995, and shall mature on each October 1, bear interest per annum and be subject to optional and mandatory sinking fund redemption, all as set forth on Schedule X attached hereto.

(B) The Series 1995A Bonds will be issued as fully registered bonds without coupons in denominations of $5,000 and integral multiples thereof for any year of maturity. Interest on the Series 1995A Bonds is payable by check or draft made payable and mailed to the owners thereof at the addresses appearing in the books kept by Bank One, West Virginia, National Association, Charleston, West Virginia, as registrar (the "Registrar"), for the registration and transfer of bonds (the "Register") as of the fifteenth (15th) day of the month preceding such interest payment date or, in the event of a default in the payment of the Series 1995A Bonds, that special record date to be fixed by the Registrar by notice given to the owners not less than 10 days prior to said special record date (the "Record Date") or, if requested, in the case of such an owner of $1,000,000 or more in principal amount of Series 1995A Bonds, by wire transfer to a domestic bank account specified in writing at least 5 days prior to the Record Date by such owner. Principal of and premium, if any, on the Series 1995A Bonds is payable to the owner thereof upon surrender thereof at the principal corporate trust department office of the Registrar, as paying agent (the "Paying Agent").

(C) The proceeds of the Series 1995A Bonds shall be deposited as follows:

(1) $2,664,496.50 of such proceeds, which is hereby found to be the amount necessary, with other available funds, to refund the 1986 Bonds which are being refunded from such proceeds shall be deposited into the Escrow Fund established under the Escrow Agreement,

(2) $6,665.83 of such proceeds, representing accrued interest on the Series 1995A Bonds from April 1, 1995, to the date of delivery thereof to the Original Purchasers shall be deposited into the Sinking Fund,

(3) $75,000.00 of such proceeds shall be deposited into the Costs of Issuance Account and used to pay Costs of Issuance, in the event any moneys remain in the Costs of Issuance Account on July 13, 1995, such moneys shall be transferred to the Sinking Fund, and

(4) $241,825.00 of such proceeds shall be deposited into the Reserve Account held in the Sinking Fund.

(D) The sale of the Series 1995A Bonds to Wheat, First Securities, Inc., who are hereby designated as the Original Purchasers of the Series 1995A Bonds, and the Purchase Agreement dated April 3, 1995 in the form attached to this Resolution as Exhibit A are hereby approved. The Mayor is authorized and directed to execute and deliver the Bond Purchase Agreement with such changes and insertions as he may approve. The Mayor's signature on such Agreement shall be conclusive evidence of such approval.

(E) The City hereby ratifies and approves the distribution of a Preliminary Offical Statement dated March 23, 1995, with respect to the Series 1995A Bonds, attached to this Resolution as Exhibit B. The City further authorizes and approves the execution and delivery of the Official Statement dated April 3, 1995, in the form attached hereto as Exhibit C, and hereby authorizes and directs the Mayor to execute the same and deliver the Official Statement to the Original Purchasers.

(F) The City authorizes and directs the West Virginia Municipal Bond Commission to transfer the moneys held in the sinking fund and reserve account for the 1986 Bonds to Bank One, West Virginia, National Association, as Escrow Trustee.

Section 3. All other provisions relating to the Series 1995A Bonds shall be as provided in the Ordinance, and the Series 1995A Bonds shall be in substantially the form provided in the Ordinance with such changes, insertions and omissions as may be approved by the Mayor of the City. The execution of the Series 1995A Bonds by the Mayor shall be conclusive evidence of such approval.

Section 4. The City hereby determines that the bank currently serving as the Depository Bank for the Sewer Revenue Fund shall continue in that capacity.

Section 5. The City hereby appoints and designates Bank One, West Virginia, National Association, Charleston, West Virginia, as Registrar for the Bonds.

Section 6. The City hereby appoints and designates Bank One, West Virginia, National Association, as Paying Agent for the Bonds.

Section 7. The City hereby appoints and designates Bank One, West Virginia, National Association, Charleston, West Virginia, as the escrow trustee for the 1986 Bonds being refunded with the proceeds of the Series 1995A Bonds.

Section 8. The City does hereby find and determine that the amount of bonds, other than private activity bonds which it anticipates issuing during calendar year 1995 shall not exceed $10,000,000 and therefore the City hereby designates the Series 1995A Bonds as "qualified-tax-exempt obligations" for purposes of Section 265(b) of the Code.

Section 9. The City hereby establishes October 1, 2001, as the Prior Bonds Redemption Date with respect to the 1986 Bonds being refunded with the proceeds of the Series 1995A Bonds.

Section 10. The Mayor and City Recorder are hereby authorized and directed to execute and deliver such other documents and certificates, including the Registrar's Agreement and the Letter of Representations with The Depository Trust Company, required or desirable in connection with the Series 1995A Bonds in order for the Series 1995A Bonds to be delivered to the Original Purchasers pursuant to the Purchase Agreement.

Section 11. The City shall not permit at any time or times any of the proceeds of the Series 1995A Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code, by reason of the classification of the Series 1995A Bonds as "private activity bonds" within the meaning of the Code. It will take all actions necessary to comply with the Code, including the Treasury Regulations to be promulgated thereunder.

Section 12. The refunding of the 1986 Bonds, in part with proceeds of the Series 1995A Bonds is hereby found and determined to be in the public interest, serve a public purpose of the City and promote the health, welfare and safety of the residents of the City.

Section 13. The City hereby approves the execution and delivery of the Tax Regulatory Agreement substantially in the form attached to this Resolution as Exhibit D and authorizes and directs the Mayor to execute said agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Tax Regulatory Agreement by the Mayor shall be conclusive evidence of such approval. The City hereby specifically agrees to be bound by the provisions of the Tax Regulatory Agreement relating to rebate required by the Code.

Section 14. This Supplemental Resolution shall be effective immediately upon adoption.

SCHEDULE X

AMOUNTS, MATURITY SCHEDULE AND INTEREST RATE

AMOUNT	MATURITY DATE (October 1)	INTEREST RATE	PRICE
$40,000	1996	4.70%	100%
40,000	1997	4.90%	100%
45,000	1998	5.10%	100%
45,000	1999	5.20%	100%
50,000	2000	5.30%	100%
50,000	2001	5.40%	100%
55,000	2002	5.50%	100%
55,000	2003	5.60	100%
60,000	2004	5.70%	100%
65,000	2005	5.75%	100%
775,000	2014	6.50%	98.640%
1,815,000	2025	6.75	98.410%

A. Optional Redemption

The Series 1995A Bonds are not subject to optional redemption prior to October 1, 2005. At the option of the City, the Series 1995A Bonds will be subject to redemption prior to maturity on or after October 1, 2005, as a whole at any time and in part on any interest payment date, in inverse order of maturity and by random selection within maturities if less than all of any maturity, at a redemption price (expressed as a percentage of the principal amount) set forth below, plus interest accrued to the date fixed for redemption.

Period During which Redeemed	Redemption Price
October 1, 2005 through September 30, 2006	102%
October 1, 2006 through September 30, 2007	101%
October 1, 2007 and thereafter	100%

B. Mandatory Redemption

The Series 1995A Bonds maturing on October 1, 2014, ("2014 Term Bonds"), are subject to annual mandatory redemption prior to maturity by random selection in accordance with the requirements of the Bond Ordinance at the principal amount thereof plus interest accrued to the date fixed for redemption, on October 1 of each of the years and in the principal amounts set forth below:

2014 TERM BONDS

Year	Principal Amount
2006	$65,000
2007	70,000
2008	75,000
2009	80,000
2010	85,000
2011	90,000
2012	95,000
2013	105,000
2014	110,000

The Series 1995A Bonds maturing on October 1, 2025, ("2025 Term Bonds"), are subject to annual mandatory redemption prior to maturity by random selection in accordance with the requirements of the Bond Ordinance at the principal amount thereof plus interest accrued to the date fixed for redemption, on October 1 of each of the years and in the principal amounts set forth below:

2025 TERM BONDS

Year	Principal Amount
2015	$115,000
2016	125,000
2017	135,000
2018	140,000
2019	150,000
2020	160,000
2021	175,000
2022	185,000
2023	195,000
2024	210,000
2025	225,000

This is a true and accurate copy of a Supplemental Resolution duly passed by .ne Common Council of the City of Beckley on April 3, 1995.

Gary R. Sutphin
ecorder-Treasurer

CITY OF BECKLEY

REFUNDING BOND ORDINANCE

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT MORE THAN $3,600,000 IN AGGREGATE PRINCIPAL AMOUNT OF CITY OF BECKLEY SEWERAGE SYSTEM REVENUE REFUNDING BONDS, SERIES 1994 A, FOR THE PURPOSE OF DEFEASING CERTAIN OUTSTANDING OBLIGATIONS OF THE CITY OF BECKLEY DESIGNATED AS CITY OF BECKLEY SEWERAGE SYSTEM REVENUE BONDS, SERIES 1986; AUTHORIZING THE DEFEASANCE OF CERTAIN OUTSTANDING SEWERAGE SYSTEM REVENUE BONDS OF THE CITY OF BECKLEY; AUTHORIZING THE ISSUANCE OF A SERIES OF SEWERAGE SYSTEM REVENUE REFUNDING BONDS OF SAID CITY OF BECKLEY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $3,600,000, WHICH, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE CITY OF BECKLEY MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSE, TO MAKE PROVISION FOR SUCH REFUNDING; AUTHORIZE AN ESCROW AGREEMENT IN CONNECTION WITH THE DEFEASANCE OF SAID REVENUE BONDS; FUND A RESERVE ACCOUNT FOR THE REFUNDING BONDS AND PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATED THERETO.

Be It Ordained by the City Council of Beckley, West Virginia:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended (the "Act"), and other applicable provisions of law.

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

A. The City of Beckley, West Virginia (the "City"), now owns a sewerage system (the "System"), both within and without the corporate limits of the City, consisting of a sewage treatment plant or plants and its collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations and ejector stations and all other appurtenances, extensions, improvements and betterments necessary, appropriate, useful, convenient or incidental for the collection, treatment and disposal in a sanitary manner of sanitary sewage and industrial wastes.

B. In accordance with Section 2 of the Act, the System is under the supervision and control of the Sanitary Board of the City (the "Sanitary Board").

C. The acquisition and construction of the System were financed in part by the proceeds of prior bond and note issues of the City, including $2,495,147 Sewer Revenue Bonds, Series 1986 (the "1986 Bonds").

D. The 1986 Bonds are currently outstanding in the aggregate principal amount of $2,432,655.

E. The City derives revenues from the System, and, except for the pledges thereof to secure and pay the 1986 Bonds, said revenues are not pledged or encumbered in any manner.

F. The City may now refund the 1986 Bonds at a savings to the City and, therefore, such refunding is in the best interests of the City.

G. The 1986 Bonds will be refunded with the proceeds of the Series 1994 A Bonds, together with funds of the Sanitary Board made available by the refunding of the 1986 Bonds

H. The estimated revenues to be derived in each year after the enactment of this Ordinance from the operation of said System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Bonds authorized to be issued pursuant to this Ordinance and all sinking fund, reserve account and other payments provided for in this Ordinance.

I. The Series 1994 A Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the form set forth herein with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the City.

J. All things necessary to make the Series 1994 A Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the City according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Series 1994 A Bonds, will be timely done and duly performed.

K. The enactment of this Ordinance, and the execution and issuance of the Series 1994 A Bonds, subject to the terms thereof, will not result in any breach of, nor constitute a default under, any instrument to which the City is a party or by which it may be bound or affected.

L. The City is a governmental unit with general taxing powers.

M. The Series 1994 A Bonds are not private activity bonds as defined in the Code.

N. Ninety-five percent (95%) or more of the net proceeds (as defined with respect to the Code) of the Series 1994 A Bonds will be used for local governmental activities of the City.

O. The City shall not permit at any time any of the proceeds of the Bonds or other funds of the City to be used directly or indirectly in any manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code.

P. The City will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds.

Q. The Bonds will not be federally guaranteed within the meaning of Section 149(b) of the Code.

R. It is deemed necessary for the City to issue its Series 1994 A Bonds to refund the 1986 Bonds.

Section 1.03. Ordinance Constitutes a Contract. In consideration of the acceptance of the Bonds authorized to be issued hereunder by those who shall hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the City and such Bondholders, and the covenants and agreements herein set forth to be performed by said City shall be for the equal benefit, protection and security of the legal holders of any and all of such Bonds issued hereunder, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bond 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 in this Ordinance unless the context expressly required otherwise:

"Act" shall mean Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

"Authorized Newspaper" shall mean a financial journal or newspaper of general circulation in the City of New York, New York, printed in the English language and customarily published on each business day of the Registrar, whether or not published on Saturdays, Sundays or legal holidays, and so long as so published, shall include The Bond Buyer.

Authorized Officer" shall mean the Mayor of the City

or any other officer of the City specifically designated by resolution of the City Council.

"Bondholder" or "Holder of the Bonds," or "Owner of the Bonds" or "Registered Owner" or any similar term shall mean any person who shall be the Registered Owner of any outstanding fully registered Bond.

"Bond Register" shall mean the books of the City maintained by the Registrar for the registration and transfer of the Bonds.

"Bonds" shall mean the City of Beckley Sewerage System Revenue Refunding Bonds, Series 1994 A Bonds and any pari passu additional Bonds hereafter issued within the terms, restrictions and conditions contained in this Ordinance.

"Bond Year" shall mean the twelve 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.

"Certificate of Authentication and Registration" shall mean the Certificate of Authentication and Registration on the Series 1994 A Bonds, substantially in the form set forth herein.

"City" shall mean The City of Beckley, a municipal corporation of the State of West Virginia, and, where appropriate, the City Council and/or Sanitary Board of the City.

"City Clerk" shall mean the Clerk or Recorder of the City.

"City Council" means the Council of the City or any other governing body of the City that succeeds to the functions of the City Council as presently constituted.

"Closing Date" shall mean the date or dates upon which there is an exchange of the Bonds for the proceeds representing the original purchase price thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations issued pursuant thereto.

"Commission" shall mean the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Commission.

"Consulting Engineers" shall mean a firm of registered professional engineers selected by the Board to provide consulting services with respect to the acquisition and

construction of additions, improvements and betterments to the System.

"Costs of Issuance" shall mean those costs of issuing Bonds, including, but not limited to, legal, accounting, fiscal agent fees and expenses and other fees and expenses in connection therewith.

"Costs of Issuance Account" shall mean the account of that name created pursuant to Section 5.02 hereof.

"Depository Bank" shall mean the bank or banks to be designated as such in the Supplemental Resolution.

"DTC" shall mean The Depository Trust Company, New York, New York.

"DTC Eligible" shall mean Bonds meeting the qualifications prescribed by The Depository Trust Company, New York, New York.

"Escrow Agreement" shall mean the separate agreement between the City, the Commission and an escrow trustee, substantially in the form of the agreement attached hereto as Exhibit B and by this reference made a part hereof, relating to the refunding or defeasance of the 1986 Bonds.

"Escrow Fund" shall mean the fund created by Paragraph 2 of the Escrow Agreement.

"Event of Default" shall mean any occurrence or events specified in Section 7.01 hereof.

"FDIC" shall mean the Federal Deposit Insurance Corporation or any successor to the function of the FDIC.

"Fiscal Year" shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

"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, including (i) such obligations which have been stripped from their unmatured interest coupons, interest coupons stripped from such obligations and receipts or certificates evidencing payments from such obligations or interest coupons stripped from such obligations, (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of

America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

"Independent Accountants" shall mean any certified public accountant or firm of certified public accountants which shall be retained by the City as independent accountants for the System.

"Mayor" means the Mayor of the City.

"Net Proceeds" shall mean the face amount of the Bonds, plus accrued interest or premium, if any, less Original Issue Discount, if any, and less proceeds deposited in the Reserve Account, if any.

"Net Revenues" shall mean Revenues less Operating Expenses.

"Operating Expenses," unless qualified, shall mean the current expenses, paid or accrued, of repair, operation and maintenance of the System (excluding depreciation) and includes, without limiting the generality of the foregoing, insurance premiums, supplies, labor, wages, the cost of materials and supplies used for current operations, administrative expenses of the City or the Sanitary Board relating and chargeable to the System and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting practices.

"Original Purchaser" shall mean that investment banking firm or other entity designated as such in a Supplemental Resolution.

"Outstanding" when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being issued and delivered except (a) any Bond cancelled by the Registrar for such Bond at or prior to said date; (b) any Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Bond deemed to have been paid as provided by Section 9.05; and (d) with respect to determining the number or percentage of Bondholders or Bonds for the purpose of consents, notices and the like, any Bond registered to the City.

"Participant" shall mean the person or entity registered as such with the Depository Trust Company.

"Paying Agent" shall mean an paying agent for the Bonds appointed by a resolution supplemental hereto.

"Prior Bonds" or "1986 Bonds" shall mean the City's Sewer Revenue Bonds, Series 1986, dated May 29, 1986, issued in the original principal amount of $2,495,147 and currently outstanding in the principal amount of $2,432,655.

"Prior Bonds Redemption Date" shall mean the date or dates established by a Supplemental Resolution for the redemption of the Prior Bonds.

"Prior Ordinance" shall mean the Ordinance enacted by the City Council on May 22, 1984, as amended and supplemented, authorizing the issuance of the Prior Bonds.

"Private Business Use" shall mean use directly or indirectly in any trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

"Qualified Investments" shall mean and include any of the following:

(a) Government Obligations;

(b) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including:

Export - Import Bank
Farmers Home Administration
General Services Administration
U. S. Maritime Administration
Small Business Administration
Government National Mortgage Association (GNMA)
U. S. Department of Housing & Urban Development (PHA's)
Federal Housing Administration;

(c) bonds notes or other evidences of indebtedness rated "AAA" by Standard & Poor's Corporation and "Aaa" by Moody's Investor Services, Inc., issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;

(d) U. S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by Standard & Poor's Corporation and "P-1" by Moody's Investor Services, Inc. and maturing no more than 360 days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank);

(e) commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by Standard & Poor's Corporation and "P-1" by Moody's Investor Services, Inc. and which matures not more than 270 days after the date of purchase;

(f) investments in a money market fund rated "AAAm" or "AAAm-G" or better by Standard & Poor's Corporation; and

(g) pre-refunded municipal obligations defined as follows:

Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (A) which are rated, based on the escrow, in the highest rating category of Standard & Poor's Corporation and Moody's Investor Services, Inc. or any successors thereto; or (B)(i) which are fully secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or obligations described in paragraph (a) above, which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which fund is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate.

"Record Date" shall mean the day of the month which shall be so stated in the Bonds, regardless of whether such day is a Saturday, Sunday or other legal holiday.

"Redemption Price" shall mean such amount as is established in a Resolution supplemental hereto.

"Refunding Bonds" or "Series 1994 A Bonds" shall mean the Sewerage System Refunding Revenue Bonds, Series 1994 A, of the City originally authorized to be issued pursuant to this Ordinance.

"Registrar" means the bank to be designated in the

Supplemental Resolution as the registrar for the Bonds, and any successor thereto.

"Regulations" shall mean temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1986, as amended.

"Renewal and Replacement Fund" shall mean the fund created by Section 4.01 hereof.

"Representation Letter" shall mean the Letter Agreement among the City, DTC and the Paying Agent.

"Reserve Account" shall mean the account in the Sinking Fund, as hereinafter defined, created by Section 4.01 hereof.

"Reserve Account Requirement" shall mean the maximum amount of principal and interest which will mature and come due on the Bonds in the then current or any succeeding Fiscal Year.

"Revenue Fund" shall mean the fund created by Section 4.01 hereof.

"Revenues" shall mean all rates, rents, fees, charges or other income received by or accrued to the Sanitary Board from the operation of the System, as calculated in accordance with generally accepted accounting practices.

"Sanitary Board" shall mean the Sanitary Board of the City as now or hereafter constituted or any other agency, department or instrumentality of the City which shall at any time have jurisdiction, possession or control of the System or the management and operation thereof.

"Sinking Fund" shall mean the fund created by Section 4.01 hereof.

"Supplemental Resolution" shall mean any ordinance or resolution amendatory hereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution authorizing the sale of the Series 1994 A Bonds to the Original Purchaser; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"System" shall mean the complete existing sewerage system now owned by the City, both within and without the corporate limits of the City, consisting of a sewage treatment plant or plants collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations

and ejector stations and all other appurtenances, extensions, additions and improvements necessary, appropriate, useful, convenient or incidental to the collection, treatment and disposal in a sanitary manner of sewage and industrial wastes, and shall include any extensions, improvements and betterments thereto hereafter acquired or constructed for said sewerage system from any sources whatsoever.

"Value," which shall be determined as of the end of each month, means that the value of any investments shall be calculated as follows:

(a) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times); the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(b) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the City in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; and

(c) as to certificates of deposit and bankers acceptances; the face amount thereof, plus accrued interest.

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

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

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

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

ARTICLE II

AUTHORIZATION FOR REFUNDING PRIOR BONDS

Section 2.01. Authorization for Refunding Prior Bonds. The 1986 Bonds outstanding as of the date of issuance of the Series 1994 A Bonds hereby ordered to be refunded pursuant to the terms of the Escrow Agreement, and the lien of said Prior Bonds imposed by the Prior Ordinance on the revenues of the System is hereby ordered terminated, discharged and released upon the payment into the Escrow Fund from the proceeds of said Series 1994 A Bonds, together with other moneys available therefor, including those moneys transferred as provided below, of the following: (a) an amount equal to the fiscal and paying agent charges, and (b) an amount which will be simultaneously invested in United States Treasury Obligations bearing interest and having maturities sufficient to provide (i) for the payment of the principal of the Prior Bonds as the same mature on each principal payment date established with respect thereto prior to the Prior Bonds Redemption Date, if any, established for such Prior Bonds, (ii) for the payment of the redemption price of the Prior Bonds outstanding on the Prior Bonds Redemption Date, if any, established for such Prior Bonds, and (iii) for the payment of the interest on the Prior Bonds as the same becomes due. Contemporaneously with the deposit of proceeds of the Series 1994 A Bonds into the Escrow Fund, and as prescribed by the Escrow Agreement, the amounts on deposit in the sinking fund created and maintained on behalf of the Prior Bonds shall be deposited into the Escrow Fund and simultaneously invested as provided in the Escrow Agreement. Upon the refunding of the Prior Bonds, the amounts on deposit in the renewal and replacement fund created and maintained under the Prior Ordinance with respect to the Prior Bonds shall be transferred to the Renewal and Replacement Fund created under this Ordinance.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Series 1994 A Bonds. For the purpose of refunding all of the outstanding 1986 Bonds, there shall be issued the Sewerage System Refunding Revenue Bonds, Series 1994 A of the City. The Series 1994 A Bonds shall be in such aggregate principal amount, not to exceed $3,600,000; shall be dated such date; shall bear interest payable semiannually at such dates and at such rate or rates not exceeding the rate permitted by the Act; shall mature at such time or times, not exceeding forty (40) years after the date of issuance; and shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and as the City Council shall prescribe by Supplemental Resolutions adopted in connection with the sale of such Series 1994 A Bonds.

The Bonds shall be payable as to principal at the office of the Paying Agent in any coin or currency which on the respective date of payment of principal and interest, is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address that appears on the books of the Registrar.

The Series 1994 A Bonds shall, at the option of the City, be redeemable in whole or in part, at the times, in the manner, and upon payment of the redemption prices, as provided in the Supplemental Resolutions.

The Series 1994 A Bonds shall be sold as soon as practical and in the best interests of the City, as may be authorized and permitted by applicable law, and delivered to the Original Purchaser thereof; provided, that such Original Purchaser and the City shall have agreed to the terms of the purchase thereof.

Section 3.02. Execution of Bonds. Bonds shall be executed in the name of the City by the manual or facsimile of the Mayor, and the seal of the City shall be affixed thereto or imprinted thereon and attested by the manual or facsimile of the City Clerk. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the City before the 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 Bonds may be signed and sealed on behalf of the City by such person as at the actual

time of the execution of such Bonds shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.07, shall have been manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered, and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Book-Entry Bonds.

(a) Except as provided in subparagraph (c) of this Section 3.04, the Registered Owner of all of the Bonds shall be The Depository Trust Company (hereinafter "DTC"), and the Bonds shall be registered in the name of Cede & Co. Payment of semiannual interest for any Bond registered as of each Record Date in the name of Cede & Co. shall be made by wire transfer of New York clearing house or equivalent next-day funds to the account of Cede & Co. on the interest payment date for the Bonds at the address indicated on the regular Record Date or special Record Date for Cede & Co. in the Bond Register.

(b) The City and the Bond Register may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal or redemption price of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under this Ordinance, registering the transfer of the Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever, and neither the City nor the Bond Register shall be affected by any notice to the contrary. Neither the City nor the Bond Register shall have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any Participant of any amount in respect of the principal or redemption price of or interest on the Bonds; any notice which is permitted or required to be given to Bondholders under this Ordinance; the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Bonds; or

any consent given or other action taken by DTC as Bondholder. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or "upon the order of" (as that term is used in the Uniform Commercial Code as adopted in the State of West Virginia), and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal or redemption price of and interest on the Bonds to the extent of the sum or sums so paid. No person other than DTC shall receive an authenticated Bond for each separate stated maturity evidencing the obligation of the City to make payments of principal or redemption price and interest pursuant to this Ordinance. Upon delivery by DTC to the City of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions herein with respect to Record Dates, the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(c) In the event the City determines that it is in the best interest of the Owners that they be able to obtain Bond certificates, the City may notify DTC, whereupon DTC will notify the Participants, of the availability through DTC of Bond certificates. In such event, the City shall issue and the Bond Register shall authenticate, transfer and exchange Bond certificates as requested by DTC and any other Bondholders in appropriate amounts. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the City and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the City shall be obligated to deliver Bond certificates as described herein. In the event Bond certificates are issued, the provisions herein shall apply to, among other things, the transfer and exchange of such certificates and the method of payment of principal of and interest on such certificates. Whenever DTC requests the City to do so, the City will assist DTC in taking appropriate action after reasonable notice (a) to make available one or more separate certificates evidencing the Bonds to any Participant having Bonds credited to its DTC account or (b) to arrange for another securities depository to maintain custody of certificates evidencing the Bonds.

(d) Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of Cede & Co., all payments with respect to the principal or redemption price of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided in the Representation Letter. When the City gives notices to DTC or its nominee as Bondholder, it shall request that DTC forward (or cause to be forwarded) the notices to the Participants so that such Participants may forward (or cause to be forwarded) such notices to the Owners.

(e) In connection with any notice or other communication to be provided to Bondholders pursuant to this Ordinance by the City with respect to any consent or other action to be taken by Bondholders, the City shall establish a record date for such consent or other action and give DTC notice of such record date not less than 15 calendar days in advance of such record date to the extent possible. Notice to DTC shall be given only when DTC is the sole Bondholder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer or registration set forth below, the Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Registered Owner, in accepting any of said 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, and each successive Registered Owner 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 any of the Bonds remain Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Bonds.

The Bonds shall be transferable only upon the Bond Register by the Registered Owner thereof in person or by its attorney or legal representative duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Owner or such duly authorized attorney or legal representative.

In all cases in which the privilege of exchanging Bonds or transferring the Bonds is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchanges or transfer shall forthwith be cancelled by the Registrar. For every such exchange or transfer of Bonds, the 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 said Registrar incurred in connection therewith, which changes and expenses shall be paid by the Registered Owner requesting such transfer or exchange. The Registrar shall not be obligated to make any such change or transfer of Bonds during the period beginning with the Record Date and ending on the date or, in a case of any partial redemption of Bonds [illegible]ring the fifteen days next preceding the date of the selection of Bonds to be redeemed.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bonds shall become mutilated or be destroyed, stolen or lost, the City may in its discretion issue and deliver a new Bond in exchange and substitution for such Bonds so mutilated, destroyed, stolen or lost, upon surrender and cancellation of such mutilated Bond or in lieu of and substitution for the Bond, if any, destroyed, stolen or lost, and upon the holder's furnishing the City proof of his or her ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur. All Bonds so surrendered shall be cancelled by the Registrar and held for the account of the City. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the City may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.07. Bonds Secured by Pledge of Revenues; Not to be Indebtedness of the City. The payment of the debt service of all of the Series 1994 A Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Revenues derived from the System. Such Revenues, in the amount sufficient to pay the principal of and interest on the Bonds and to make the payments required into the Sinking Fund and the Reserve Account therein, and the Renewal and Replacement Fund all hereinafter established, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due. The Bonds shall not, in any event, be or constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from Revenues and otherwise as provided herein. No Registered Owner or Owners of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay the Bonds or the interest thereon.

Section 3.08. Notice of Redemption.

(a) The Registrar shall cause notice of any redemption of Bonds to be mailed by first class mail to the Owners of all Bonds to be redeemed at the addresses thereof appearing in the Registration Books. Each such notice shall (i) be mailed not

more than 60 days nor less than 30 days prior to the redemption date, (ii) identify the Bonds to be redeemed (specifying the CUSIP numbers, if any, assigned to the Bonds), (iii) specify the redemption date and the Redemption Price, and (iv) state that on the redemption date the Bonds called for redemption will be payable at the principal corporate trust office of the Paying Agent, that from that date the Bonds called for redemption will be deemed to be paid, and interest will cease to accrue, and that no representation is made as to the accuracy or correctness of the CUSIP numbers printed therein or notice of redemption or mailing thereof (including any failure to mail such notice), shall affect the validity of the redemption proceedings for any other Bonds for which notice was properly given.

(b) If at the time of mailing of any notice of redemption the City shall not have deposited with the Paying Agent moneys sufficient to redeem all the Bonds called for redemption, such notice shall state that it is subject to the deposit of such moneys with the Paying Agent not later than the opening of business on the redemption date and shall be of no effect unless such moneys are so deposited. If such moneys are not deposited by such date and time, the Registrar promptly shall notify the Owners of all Bonds called for redemption of such fact.

(c) Notwithstanding any other provisions herein to the contrary, the Registrar shall cause copies of any notices delivered pursuant to this Section 3.08 to be delivered to such other organizations or entities to which like notices are then delivered in accordance with industry standards.

Section 3.09 Form of Bonds. The text of the Bonds, and the form of the Certificate of Authentication and Registration thereon, shall be of substantially the following tenor, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof.

No.R-_____ $_____

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF RALEIGH
THE CITY OF BECKLEY
SEWERAGE SYSTEM
REFUNDING REVENUE BOND
SERIES 1994 A

INTEREST RATE BOND DATE MATURITY DATE CUSIP

REGISTERED OWNER: (July/January)

[TAX IDENTIFICATION NUMBER]

PRINCIPAL AMOUNT: $_____

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF BECKLEY, a municipal corporation organized and existing under the laws of the State of West Virginia (hereinafter referred to as the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the Registered Owner set forth above, on the Maturity Date set forth above, the Principal Amount set forth above and solely from such special funds also to pay interest on said sum from the Bond Date, set forth above, at the Interest Rate set forth above semiannually, on the first day of January and the first day of July in each year, beginning _____ 1, 19__, both principal of and interest on this Bond being payable in any coin or currency which, on the respective dates of payment of principal and interest, is legal tender for the payment of public and private debts under the laws of the United States of America. The interest on this Bond is payable by check or draft of the Paying Agent mailed to the Registered Owner hereof at the address as it appears on the books of _____, West Virginia, as registrar (the "Registrar") on the 15th day of the month preceding an Interest Payment Date (the "Record Date").

This Bond is one of a series of bonds (the "Bonds"), in the aggregate principal amount of $_____, of like date and of like tenor and effect, except as to number, date of maturity and interest rate, issued to refund certain sewerage system revenue bonds of the City outstanding on the date of issuance hereof in the aggregate principal amount of $_____ (the "1986 Bonds"), all under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended (the "Act"), and

an ordinance duly passed by the City Council on the _____ day of _____, 19___ as supplemented by resolution adopted on the _____ day of _____, 19_____, (hereinafter referred to collectively as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance.

The Bonds are not subject to optional redemption prior to _____ 1, _____. At the option of the City, the Bonds will be subject to redemption prior to maturity on or after _____ 1, _____. as a whole at any time and in part on any interest payment date, in inverse order of maturity and by random selection within maturities if less than all of any maturity, at a redemption price (expressed as a percentage of the principal amount) set forth below, plus interest accrued to the date fixed for redemption:

Period During which Redeemed	Redemption Price
_____ 1, _____ through _____, _____	102%
_____ 1, _____ through _____, _____	101%
_____ 1, _____ and thereafter	100%

The Bonds maturing on _____, and _____, respectively ("Term Bonds"), are subject to annual mandatory redemption prior to maturity by random selection in accordance with the requirements of the Ordinance at the principal amount thereof plus interest accrued to the date fixed for redemption, on _____ 1 of each of the years and in the principal amounts set forth below:

TERM BONDS		TERM BONDS	
Year	Principal Amount	Year	Principal Amount

The Bonds are payable only from and are secured by the revenues to be derived from the operation of the sewerage system of the City (the "System"), which is under the supervision and control of the Sanitary Board of the City, and the sinking fund held by the West Virginia Municipal Bond Commission, including the reserve account therein. Said revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the City within any constitutional or statutory provision or limitation, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from

the revenues from the operation of the System or said reserve account. By the Ordinance, the City has covenanted and agreed to fix, establish and collect just and equitable rates or charges for the use of the services and facilities of the System so as to always provide revenues at least sufficient to provide for all reasonable expenses of repair, maintenance and operation of the System and leave a balance each year equal to at least one hundred twenty percent (120%) of the maximum annual amount required to pay the interest on and principal of the Bonds and all other obligations secured by or payable from the revenues of the System prior to or on a parity with the Bonds, as the same become due and accomplish retirement of the Bonds and all bonds on a parity therewith for the payment of which such revenues have or shall have been pledged, charged or otherwise encumbered. Such required payments shall constitute a first charge upon all the net revenues of the System. The City has entered into certain further covenants with the holders of the Bonds for the terms of which reference is made to the Ordinance. Remedies provided the holders of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, only upon the books of the Registrar which shall be kept for that purpose at the office of the Registrar, by the Registered Owner or by its attorney or legal representative duly authorized in writing, upon surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Owner or its duly authorized attorney or legal representative duly authorized in writing.

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

All moneys received from the sale of the Bonds shall be applied solely to refund the 1986 Bonds, and to pay other costs in connection therewith, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the holder or holders of said Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this

Bond, together with all other obligations of said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds.

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

This Bond shall not be valid or obligatory for any purpose or entitled to any security or benefit under the Ordinance unless and until the Certificate of Authentication and Registration attached hereto shall have been manually executed by the Bond Registrar.

IN WITNESS WHEREOF, the City has caused this Bond to be signed by its Mayor, attested by its City Clerk and its corporate seal to be imprinted hereon, all as of the Bond Date.

THE CITY OF BECKLEY, WEST VIRGINIA

_____

Mayor

[SEAL]

ATTEST:

_____

City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Sewerage System Refunding Revenue Bonds, Series 1994 A described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner set forth above on the date set forth below.

Date: _____

_____
as Registrar

By _____
Its Authorized Officer

[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 said Bond on the books kept for registration of the within Bond of said City with full power of substitution in the premises.

Dated: _____, _____.

_____

In the presence of:

_____

ARTICLE IV

SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. Application of System Revenues. So long as any of the Bonds shall be outstanding and unpaid, the City covenants with the holders of the Bonds as follows:

A. The entire Revenues derived from the operation of the System and all parts thereof shall be deposited by the City in a special fund in the Depository Bank, which fund, to be designated the "Sewerage System Revenue Fund" (the "Revenue Fund"), is hereby established. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the City and used only for the purposes and in the manner herein provided. All Revenues at any time remaining on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The City shall first each month, from the moneys in the Revenue Fund, pay all reasonable Operating Expenses of the System.

(2) Thereafter, from the moneys in the Revenue Fund, the City shall, on the first day of each month, commencing with and including the first day of that month which is seven months prior to the first interest payment date of said Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in a fund to be known as the "Sinking Fund," which is hereby created and established, a sum equal to one-sixth (1/6) of the amount of interest which will become due on the Bonds on the next ensuing semiannual interest payment date; provided, however, that, in the event the period to elapse between said initial payment date and the next semiannual interest payment date is less than seven (7) months, then such monthly payments shall be increased proportionately to provide the required amount of interest payable on the next semiannual interest payment date one month prior to said date.

The City shall also apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in said Sinking Fund, on the first day of each month, beginning on the first day of that month which is thirteen (13) months prior to the first principal payment date of the Bonds, a sum equal to one-twelfth (1/12) of the amount of principal which will mature and become due on the Bonds on the next ensuing principal payment date.

The City shall also, from the Revenue Fund, remit to the Commission on such dates or at such other times, as the Commission shall require, such additional sums as shall be necessary to pay the fiscal agency charges due for paying the Bonds and the interest thereon.

Moneys in the Sinking Fund shall be used only for the purposes of paying principal of and interest on the Bonds as the same shall become due.

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

As and when additional Bonds ranking on a parity with the Series 1994 A Bonds herein authorized are issued, provision shall be made for additional payments into said Sinking Fund sufficient to pay the principal of and interest on such additional parity Bonds and accomplish retirement thereof at or before maturity.

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

(3) Then from the moneys remaining in the Revenue Fund, the City shall next, each month, pay into the Reserve Account an amount necessary to make up any deficiency in the Reserve Account Requirement, resulting from (i) the valuation of investments in the Reserve Account which results in a determination that the amount of moneys and the Value of the Qualified Investments deposited to the credit of the Reserve Account is less than the Reserve Account Requirement, or (ii) withdrawals from the Reserve Account, for deposit into the Sinking Fund, beginning with the first full calendar month following the event described in either clause (i) or (ii) above. Provided, that in no event shall the amount deposited into the Reserve Account in any month be less than, in the event the deficiency in the Reserve Account Requirement is due to a decrease in the value of the Qualified Investments therein in excess of 10% of such amount, an amount equal to 1/4th of the amount of such deficiency, and otherwise, an amount equal to 1/12th of the amount of the deficiency in the Reserve Account determined as set forth in clause (ii) above and the amount then withdrawn from the Reserve Account, as described in clause (ii) above (it being understood that any such 1/12th payment shall be made in such amount for 12 consecutive months unless the amount in the Reserve Account shall have been made equal to the Reserve Account Requirement prior to such twelfth consecutive month); and provided further, that no payments

shall be required to be made into the Reserve Account whenever and as long as the amount deposited therein shall be equal to the Reserve Account Requirement.

(4) Thereafter, from the moneys remaining in said Revenue Fund, the City shall next, on the first day of each month commencing with the first month in which interest shall be payable from the Revenue Fund, remit to the Depository Bank for deposit in a special depreciation account, to be designated the "Renewal and Replacement Fund," which account is hereby established and created, a sum equal to two and one-half percent (2½%) of the Revenues each month, exclusive of any payments for the account of the Reserve Account in the Sinking Fund. All funds in said Renewal and Replacement Fund shall be kept apart from all other municipal funds and shall be invested and reinvested, at the direction of the City, in Qualified Investments to the fullest extent possible under applicable laws, this Ordinance and the need for such moneys for the purposes set forth below.

Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, enlargements, emergency repairs, improvements and extensions to the System; provided, that any deficiency occurring in the Reserve Accounts shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

(5) Whenever all of the required and provided transfers and payments from said Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid for operating expenses and into the Sinking Fund and the Renewal and Replacement Fund during the next succeeding three (3) months, such excess shall be considered as surplus Revenues. Said surplus revenues shall be first used for the acquisition and construction of extensions, improvements and betterments to the System, and, thereafter, to the extent not needed for such purposes, may be used to purchase Bonds upon the open market at not exceeding the then applicable redemption price or to call and redeem the Bonds on the next succeeding interest payment date or for any lawful purpose of the System.

(6) If on any monthly payment date the revenues of the System are insufficient to make the required deposits in any of the funds as hereinabove provided, the deficiency shall be made up on the next ensuing payment dates by payments in addition to the payments which are otherwise required to be made into the funds on such ensuing payment dates.

B. The Commission is hereby designated as the fiscal agent for the administration of the Sinking Fund created hereunder, and all amounts required for said Sinking Fund shall

be remitted to the Commission from said Revenue Fund and from the proceeds of the sale of the Bonds, as provided in Article V hereof, by the City at the times provided herein. All remittances made by the City to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

C. The moneys on deposit in the Revenue Fund and the Renewal and Replacement Fund (unless remitted to the Commission) in excess of the sum insured by the maximum amounts insured by the FDIC shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or such other obligations as shall be eligible as security for deposits of State and municipal funds under the laws of the State of West Virginia.

D. The Commission shall invest the funds which it holds pursuant to this Ordinance, including the Reserve Account in the Sinking Fund, to the fullest possible extent so that all moneys shall be invested for the maximum possible period consistent with the tenor hereof.

E. Anything to the contrary herein notwithstanding, when the aggregate sum in the Sinking Fund, including the Reserve Account therein, is sufficient to pay and redeem all the Bonds Outstanding and all interest accrued and to accrue thereon and any applicable redemption premiums, the City shall cause all the Bonds to be paid or called and redeemed at the earliest practicable date permitted, pursuant to the provisions hereof as to redemption of Bonds.

ARTICLE V

APPLICATION OF SERIES 1994 A BOND PROCEEDS

Section 5.01. Application of the Series 1994 A Bond Proceeds; Other Funds of the City.

A. All accrued interest received from the Original Purchaser of the Series 1994 A Bonds shall be deposited in the Sinking Fund and used to pay the next maturing interest on the Series 1994 A Bonds.

B. The amount of the Series 1994 A Bond proceeds necessary, together with such funds of the City as are made available by the defeasance of the 1986 Bonds, to refund the Prior Bonds, which amount shall be set forth in the Supplemental Resolution, shall be applied by the City pursuant to the provisions of the Escrow Agreement.

C. The remaining moneys derived from the sale of the Series 1994 A Bonds shall be deposited by the City in the Costs of Issuance Account.

Section 5.02. Reserve Account. From the moneys made available to the City as a result of the defeasance of the 1986 Bonds, the City shall remit to the Commission such funds as are necessary to fund the Reserve Account to the Reserve Account Requirement.

Section 5.03. Costs of Issuance Account. There is hereby created and established at the Depository Bank a special fund to be known as the "The City of Beckley Series 1994 A Bonds Costs of Issuance Account," which account shall be kept separate and apart from all other funds of the City, and disbursed upon requisition by the City to pay Costs of Issuance approved by the Sanitary Board. The moneys in said account shall be secured at all times by the deposit in such bank, as security, of Government Obligations having a fair market value at least equal to the balance in said fund in excess of the amount insured by the FDIC. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to, such purposes, then such unapplied proceeds shall be deposited by the City in the Sinking Fund.

ARTICLE VI

ADDITIONAL COVENANTS OF THE CITY

Section 6.01. General Covenants of the City. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the City and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bonds. In addition to the other covenants, agreements and provisions of this Ordinance, the City hereby covenants and agrees with the Holders of the Bonds as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds, or the interest thereon, is outstanding and unpaid.

Section 6.02. Bonds Not To Be Indebtedness of the City. The Bonds shall not constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the revenues of the System, or from the Reserve Account, as herein provided. No holder or holders of any Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the City to pay said Bonds or the interest thereon.

Section 6.04. Rates. Prior to the issuance of the Bonds, just and equitable rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and copies of such rates and charges so fixed and established shall at all times be kept on file in the office of the Sanitary Board and in the office of the City Clerk, each of which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce gross revenues from said System sufficient to pay operating expenses and to make the prescribed payments into the funds and accounts created hereunder. Such schedule of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the City hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be at least sufficient to provide for all reasonable operating expenses of the System and leave a balance each year equal to at least one hundred twenty percent (120%) of the maximum annual amount required to pay the interest on and principal of the Bonds and all other obligations secured by or payable from the revenues of the System prior to or on a parity with the Bonds, as the same become due and accomplish retirement of all

Bonds for the payment of which such revenues have or shall have been pledged, charged or otherwise encumbered. To the extent permitted by law, all such rates and charges, if not paid when due, shall constitute a lien upon the premises served by the System.

Section 6.05. Operation and Maintenance. The City will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of said System in the manner provided in this Ordinance.

Section 6.06. Sale of the System. The System may be sold, mortgaged, leased, or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient fully to pay or redeem at or prior to maturity all the Bonds Outstanding. The proceeds from such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the Sinking Fund, and the City shall direct the Commission to apply such proceeds to the payment of principal and interest at the maturity of Bonds about to mature and to the redemption prior to maturity, at the earliest date permitted hereby and at the redemption price, of all other outstanding Bonds. Any balance remaining after the redemption or payment of all the Bonds and interest thereon shall be remitted to the City by the Commission unless necessary for the payment of other obligations of the City payable out of the revenues of the System.

The foregoing provision notwithstanding, the City 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 is not in excess of ten thousand dollars ($10,000), the Sanitary Board 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 the City Council may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of ten thousand dollars ($10,000) but not in

excess of one hundred thousand dollars ($100,000), the Sanitary Board shall first, in writing, determine with the written approval of a consulting engineer that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the City Council may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, in excess of ten thousand dollars ($10,000) and not in excess of one hundred thousand dollars ($100,000), shall be remitted by the City to the Commission for deposit in the Sinking Fund and shall be applied only to the redemption of Bonds of the last maturities then Outstanding or to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the redemption price of such Bonds. Such payments of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance.

No sale, lease or other disposition of the properties of the System shall be made by the City if the proceeds to be derived therefrom shall be in excess of one hundred thousand dollars ($100,000) and insufficient to pay or redeem prior to maturity all the Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of sixty-six and two-thirds percent (66-2/3%) in amount of Bonds then Outstanding. The City 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 6.07. <u>Issuance of Other Obligations Payable out of Revenue and General Covenant Against Encumbrances</u>. The City shall not issue any other obligations whatsoever, except pari passu additional Bonds provided for in Section 6.08 hereof, payable from the Revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such Revenues with the Bonds; and all obligations hereafter issued by the City payable from the Revenues of the System, except such additional Bonds shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such Revenues and in all other respects to the Bonds.

The City shall not create, or cause or permit to be created any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to said pari passu additional Bonds, being on a parity with the lien of the Bonds, and the interest thereon, upon any of the

income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

Section 6.08. Additional Parity Bonds. No additional parity Bonds, as in this Section defined, payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.

No such additional parity Bonds shall be issued except for the purpose of financing the costs of the acquisition or construction of extensions, improvements and betterments to the System or refunding the entirety of one or more series of Bonds issued pursuant hereto, or both such purposes.

No such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk a written statement by Independent Accountants, based upon the necessary investigation and certification by a consulting engineer, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided, from the System during any twelve (12) consecutive months within the eighteen (18) months immediately preceding the date of the actual issuance of such additional parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such additional parity Bonds, shall not be less than one hundred twenty percent (120%) of the maximum annual amount which will mature and become due for principal of and interest in any succeeding year on the following:

(1) The Series 1994 A Bonds then Outstanding;

(2) Any additional parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and

(3) The additional parity Bonds then proposed to be issued.

The "estimated average increas[illegible] annual Net Revenues to be received in each of the three (3) succeeding years", as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from any increase in rates enacted by the City, the time for appeal of which shall have expired prior to the date of delivery of such additional parity Bonds, and shall not exceed the amount to be stated in a certificate of a consulting engineer, which shall be filed in the office of the City Clerk prior to the issuance of such additional parity Bonds, adjusted as provided in the following paragraph.

The Net Revenues actually derived from the System during the twelve (12) consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of a consulting engineer and the Independent Accountants as stated in a certificate jointly made and signed by a consulting engineer and the Independent Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the City, the time for appeal of which shall have expired prior to issuance of such additional parity Bonds.

Not later than simultaneously with the delivery of such additional parity Bonds, the City shall have entered into written contracts for the immediate acquisition or construction of such extensions, improvements and betterments to the System which are to be financed by such additional parity Bonds.

The term "additional parity Bonds," as used in this Section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this Section, payable from the Revenues of the System on a parity with the Series 1994 A Bonds, and all the covenants and other provisions of this Ordinance (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 1994 A Bonds and the Holders of any additional parity Bonds subsequently issued from time to time within the limitations of and in compliance with this Section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Revenues of the System, and their source of and security for payment from said Revenues, without preference of any Bond over any other. The City shall comply fully with all the increased payments into the various funds created in this Ordinance required for and on account of such additional Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

The term "additional parity Bonds," as used in this Section, shall not be deemed to include any bonds, notes, certificates or other obligations subsequently issued, the lien of which on the Revenues of the System is subject to the prior and superior lien of the Bonds on such revenues. The City shall not issue any obligations whatsoever payable from the Revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for payment from such Revenues, with the Bonds except in the manner and under the conditions provided in this Section.

No additional parity Bonds, as in this Section defined, shall be issued at any time, however, unless all the payments into the respective funds and accounts provided for in this Ordinance on account of the Bonds then Outstanding, and

any other payments provided for in this Ordinance shall have been made in full as required to the date of delivery of the additional parity Bonds.

The City may issue additional parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any series of the Bonds, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

Section 6.09. Insurance. The City will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the System, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. The City will require that each of its contractors and all subcontractors maintain, during the life of any construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance. In time of war, the City shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be disposed of as provided in this Ordinance and otherwise shall be placed in the Renewal and Replacement Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The City will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System.

Section 6.10. Mandatory Connections. To the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto.

Section 6.11. Consulting Engineer. The City will retain a recognized, qualified independent consulting engineer on a biannual basis to supervise generally the operation, maintenance and repair of the System and to report biannually to the City in writing their recommendations and comments as to the System. Such biannual report of a consulting engineer, or a summary thereof, shall be made available at reasonable times to any Bondholder requesting the same.

Section 6.12. Services Rendered to the City. The City will not render or cause to be rendered any free services of any nature by its System; and, in the event the City or any

department, agency, instrumentality, officer or employee of the City shall avail itself or himself or herself 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 City and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the City shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 6.13. Enforcement of Collections. The City will diligently enforce and collect all fees, rates, 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, rates, rentals or other charges that shall become delinquent to the full extent permitted or authorized by the laws of the State of West Virginia. To the extent permitted by law, all such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

Whenever any rates, rentals or charges for the services or facilities of the System, or a part thereof, shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. The City further covenants and agrees that it will, to the full extent permitted by law, and any rules and regulations Promulgated by the Public Service Commission of West Virginia applicable thereto, discontinue and shut off the sewerage services and facilities of the System and in the event the City owns a water facility (the "Water System"), the Water System to all delinquent users of the services and facilities of the System, and will not restore either water or sewerage services of the System or the Water System until all delinquent charges for the service and facilities of the System, plus reasonable interest penalty charges for the restoration of service, have been fully paid.

Section 6.14. No Competing Franchise. To the extent allowed by law, the City will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.15. Books and Records. The City will keep books and records of the System, which shall be separate and

apart from all other books, records and accounts of the City, 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 Ordinance shall have the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the City relating thereto.

The accounting system for the System shall follow currently accepted accounting practices in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the City. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other bookkeeping records as prescribed by the City. The City 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 City shall be reported to the City.

The City shall file with a consulting engineer and the Original Purchaser within 120 days following the end of each Fiscal Year, and shall mail in each year to any Bondholder requesting the same, an annual report containing the following:

A. A statement of Revenues and Operating Expenses from the System.

B. A balance sheet statement showing all deposits in all the funds and accounts provided for in this Ordinance, and the status of all said funds.

The City shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any Bondholder, and shall file said report with the Original Purchaser.

Section 6.16. Initial Schedule of Rates. The rates, fees and other charges for the use of the services and facilities of the System established under an ordinance of the City enacted on or before the date of the adoption or enactment of a resolution or ordinance adopted or enacted in connection with the sale of the Series 1994 A Bonds as provided herein shall constitute the initial schedule of rates for the System for purposes of this Ordinance.

Section 6.17. Operating Budget. The Sanitary Board shall annually, at least forty-five (45) days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the

succeeding Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a consulting engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Sanitary Board shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of ten percent (10%) of the amount of such budget shall be made except upon the further certificate of a consulting engineer that such increased expenditures are necessary for the continued operation of the System. The City shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to any Bondholder who shall file his or her address with the City and request in writing that copies of any such budgets and resolutions be furnished him or her, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Bondholder or anyone acting for and in behalf of such Bondholder.

Section 6.18. Existence of Sanitary Board. The management, operation and control of the System will be vested in the Sanitary Board, or some other separate successor agency of the City, during the period in which any Bonds issued hereunder are Outstanding.

Section 6.19. Public Purpose Bonds. The System will be solely operated for a public purpose and as a local governmental activity of the City.

Section 6.20. Private Activity Bonds. The City shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The City will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Bonds.

Section 6.21. Filings. The City will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds, including, without limitation, the information return required under Section 149(e) of the Code.

Section 6.22. Right to Amend. The City retains the right to make any amendments, insertions or deletions by Supplemental Resolutions of this Ordinance as the City deems

desirable or necessary prior to the issuance of the Bonds, including but not limited to amendments, insertions or deletions to comply with the Code. Notwithstanding the provisions of Section 9.01 hereof, the City through City Council shall without consent of the Registered Owners of the Bonds amend or supplement this Ordinance by resolutions supplemental hereto or any amendatory ordinance to comply with the Code if such amendment or supplement is necessary to preserve the tax exempt status of the Bonds. In making their determination to amend or supplement this Ordinance, the City Council may rely on the opinion of a nationally recognized bond counsel.

The City also retains the right to make any amendments, insertions or deletions by Supplemental Resolution of this Ordinance as the City deems necessary prior to the issuance of the Bonds to meet the requirements of the Original Purchaser.

Section 6.23. Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Paying Agent and the Registered Owners of the Bonds, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Paying Agent and the Registered Owners of the Bonds.

Section 6.24. Designation of Bank Eligibility. The Series 1994 A Bonds are hereby designated as a "qualified tax-exempt obligations" for the purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended. The City hereby represents that it and all subordinate entities do not reasonably anticipate to issue, during the calendar year 1994, qualified tax-exempt obligations in excess of $10,000,000.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Events of Default. A. Each of the following events shall constitute an "Event of Default" with respect to the Bonds.

(A) If default occurs in the due and punctual payment of the principal of or interest on any Bonds;

(B) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Ordinance, the Supplemental Resolution or in the Bonds and such default shall have continued for a period of 30 days after the City shall have been given written notice of such default by the Depository Bank holding any fund or account hereunder or a Registered Owner of a Bond; or

(C) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 7.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of 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 principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the City to perform its duties under the Act and this Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the City to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Ordinance with respect to the Bonds, or the rights of such Registered Owners.

Upon the occurrence of an Event of Default, the Commission may, and shall, at the direction of 51% of the Bondholders, by written notice to the City, declare the principal of the Bonds to be immediately due and payable, whereupon that portion of the principal of the Bonds thereby coming due and the interest thereon accrued to the date of payment shall, without further action, become and be immediately due and payable, anything in this Ordinance or in the Bonds to the contrary notwithstanding.

Section 7.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the City under this Ordinance and the Act, including the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof and performing any construction necessary for the System. If there be any default in the payment of interest on any Bonds when the same shall become due, or in the payment of the principal of any Bond or Bonds either at the specified date of maturity thereof or at a date set for redemption thereof, or otherwise in the performance of any covenant contained in this Ordinance other than as to such payment and such default shall continue for a period of thirty (30) days after written notice of the City of such default, any Registered Owner shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the City with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the Bonds and any interest thereon, the deposits into the funds and accounts herein provided and the payment of operating expenses of the System and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Ordinance and the Act.

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

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

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may

be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

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

ARTICLE VIII

INVESTMENT OF FUNDS; NON-ARBITRAGE

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission or the Depository Bank, as the case may be, at the direction of the City in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section.

Except as otherwise provided, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and used for the purpose of such fund or account. The interest accruing thereof and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The determination of the Value of the investments shall be made once a month. The Commission or the Depository Bank, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any account is insufficient to make the payments required from such fund or account, regardless of the loss of such liquidation. Such Depository Bank may make any and all investments permitted by this Section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

Section 8.02. Arbitrage. The City covenants that (i) it will restrict the use of the proceeds of the Series 1994 A Bonds in such manner and to such extent as may be necessary, in view of the City's reasonable expectations at the time of issuance of the Series 1994 A Bonds, so that the Series 1994 A Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and the Regulations, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 1994 A Bonds) so that the interest on the Series 1994 A Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Modification or Amendment. No material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Bondholders shall be made without the consent in writing of the holders of two-thirds (2/3) or more in principal amount of the Bonds then outstanding; provided, however, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the City to pay such principal and interest out of the revenues of the System without the consent of the Holder thereof. No amendment or modification shall be made which would reduce the percentage or modification of the principal amount of Bonds required for consent to the above permitted amendments or modifications.

Section 9.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 9.03. Covenant of Due Procedure. The City 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 final enactment and passage of this Ordinance do exist, have happen, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Clerk and members of City Council 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 9.04. Defeasance. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the holders of all Bonds the principal thereof, and redemption premium, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then the pledge of net revenues and any other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the City to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient,

to pay, as and when due, the principal of and interest on such Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section. All Bonds shall, prior to the maturity or redemption thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section if (a) in case any of said Bonds are to be redeemed on any date prior to their maturity, the City shall have given the Commission, in form satisfactory to it, irrevocable instructions to publish as provided herein notice of redemption of such Bonds on said date, (b) there shall have been deposited with the Commission either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Commission at the same or earlier time, shall be sufficient, to pay when due the principal of and redemption premium, if applicable, and interest due and to become due on said Bonds on and prior to the redemption date of maturity date thereof, as the case may be, and an opinion of nationally recognized bond counsel to the effect that such action will not adversely effect the exclusion of the interest on the Bonds from gross income for federal income tax purposes and a verification from an Independent Accountant of the sufficiency of the amounts described in clause (b) for their intended purpose, and (c) in the event said Bonds are not by their terms subject to redemption, or are otherwise not to be redeemed by the City, within the next succeeding sixty (60) days, the City shall have given the Commission in form satisfactory to it irrevocable instructions to publish, as soon as practicable, a notice to the Holders of such Bonds that the deposit required by (b) above has been made with the Commission and that said Bonds are deemed to have been paid in accordance with this Section and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of, interest on, and redemption premium, if applicable, on said Bonds. Neither securities nor moneys deposited with the Commission pursuant to this Section nor principal or interest payments on any such securities shall be held in trust for, the payment of the principal of and redemption premium, if applicable, on and interest on said Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if applicable, on and interest to become due on said Bonds on and prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the City, as received by the Commission, free and clear of any trust, lien or pledge. For the purpose of this Section, securities shall mean and include only Government Obligations.

Section 9.05. Effective Date. This Ordinance shall take effect after passage, public hearing and otherwise in the manner prescribed by law.

Section 9.06. 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 Register Herald, which is a qualified newspaper of general circulation in the City of Beckley, together with a notice stating that this Ordinance has been adopted and that the City contemplates the issuance of the 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 the abstract and notice, and present protests, and that a certified copy of the 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.

Passed on First Reading - May 24 , 1994

Passed on Second Reading - June 14 , 1994

Passed on Final Reading Following Public Hearing - June 28 , 1994

Mayor

City Recorder

WEST VIRGINIA
Water Development Authority
Celebrating 30 Years of Service 1974 - 2004

CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

CONSENT TO ISSUANCE OF PARITY BONDS

In reliance upon a certificate of the Issuer's certified public accountant stating that the coverage and parity requirements have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the Prior Bonds, hereinafter defined and described, hereby consents to the issuance of the Sewerage System Revenue Bonds, Series 2004 A (the "Bonds"), in the original principal amount of $9,039,000, by the City of Beckley (the "Issuer"), under the terms of the Bond Ordinance authorizing the Bonds, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Sewerage System Revenue Bonds, Series 1998 A (the "Prior Bonds").

WITNESS my signature on this 28th day of September, 2004.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

Authorized Representative

180 Association Drive, Charleston, WV 25311-1217
phone (304) 558-3612 / fax (304) 558-0299
www.wvwda.org

CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 2004 A

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. RATES
7. INCUMBENCY AND OFFICIAL NAME
8. MEETINGS
9. INSURANCE
10. LOAN AGREEMENT
11. SPECIMEN BOND
12. BOND PROCEEDS
13. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
14. LAND AND RIGHTS-OF-WAY
15. PUBLIC SERVICE COMMISSION ORDER
16. CONFLICTS OF INTEREST
17. PROCUREMENT OF ENGINEERING SERVICES
18. VERIFICATION OF SCHEDULE A
19. CLEAN WATER ACT
20. COUNTERPARTS

We, the undersigned MAYOR and the undersigned RECORDER of the City of Beckley in Raleigh County, West Virginia (the "Issuer"), and the undersigned CITY ATTORNEY for the Issuer, hereby certify in connection with the City of Beckley Sewerage System Revenue Bonds, Series 2004 A, numbered AR-1, dated the date hereof, in the principal amount of $9,039,000 (the "Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance duly passed by the Issuer on July 13, 2004, effective July 27, 2004, the Supplemental Resolution duly adopted by the Issuer on September 14, 2004 (collectively, the "Bond Ordinance"), and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection ("DEP"), dated September 16, 2004 (the "Loan Agreement").

2. NO LITIGATION: No controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the authorization, issuance, sale and delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Net Revenues for the Bonds; nor affecting the validity of the Bonds or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the title of the members or officers of the Issuer, the Governing Body, or the Sanitary Board to their respective offices; nor questioning any proceedings of the Issuer taken with respect to the authorization, issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Net Revenues for the Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable and necessary approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect, and competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the Code of West Virginia, 1931, as amended, which bids remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery by the Issuer of the Loan Agreement. The Issuer has met all conditions set forth in the Loan Agreement and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

The Bonds are issued on a parity with the Prior Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. The Issuer has obtained (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the registered owners of the Prior Bonds (except the Series 1995 A Bonds) to the issuance of the Bonds on a parity with the Prior Bonds. The Issuer is not required to obtain the parity consent of the registered owners of the Series 1995 A Bonds. The Bonds are issued senior and prior to the Notes with respect to liens, pledge and source of and security for payment and in all other respects. Other than the Prior Bonds and the Notes, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all the terms and provisions of the Prior Bonds and the Prior Ordinances.

5. SIGNATURES AND DELIVERY: The undersigned Mayor and Recorder are the duly elected or appointed, qualified and acting officers of the Issuer as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Bonds for the Issuer. The seal impressed upon the Bonds and this Certificate is the duly authorized, proper and only seal of the Issuer. On the date hereof, the undersigned Mayor did officially sign all of the Bonds,

consisting upon original issuance of a single Bond, dated the date hereof, by his manual signature; the undersigned Recorder did officially cause the seal of the Issuer to be affixed upon the Bonds and to be attested by his manual signature; and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement.

6. RATES: The Issuer has duly enacted a sewer rate ordinance on January 27, 2004, setting forth the rates and charges for the services of the System. The Issuer has complied with all requirements of the Act and the Public Service Commission of West Virginia (the "PSC") to make the rates valid and effective. The time for appeal of such rate ordinance has expired and there has been no appeal thereof and such rates are in full force and effect.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "City of Beckley." The Issuer is a municipal corporation of the State of West Virginia in Raleigh County of said State. The Governing Body of the Issuer is its Council, consisting of 7 Council members and the Mayor. The Recorder is the ex officio clerk of the Council. The names and dates of commencement and termination of terms of office for all such officials are listed below:

Office	Name	Date Of Commencement Of Office	Date Of Termination Of Office
Mayor	Emmett S. Pugh, III	July 1, 2003	June 30, 2007
City Recorder	Gary Sutphin	July 1, 2003	June 30, 2007
Council Member	A. K. Minter, Jr.	July 1, 2003	June 30, 2007
Council Member	Ann Worley	August 24, 2004	June 30, 2007
Council Member	Tim Berry	July 1, 2003	June 30, 2007
Council Member	Lee Leftwich	July 1, 2003	June 30, 2007
Council Member	Howard Mollohan	July 1, 2003	June 30, 2007
Council Member	Robert Rappold	July 1, 2003	June 30, 2007
Council Member	Steve Nickell	July 1, 2003	June 30, 2007

The names of the duly appointed, qualified and acting members of the Sanitary Board of the Issuer are as follows:

Chairman: Emmett S. Pugh, III
Member: Thomas Keyser
Member: John Sadowski, P.E.

The duly appointed and acting City Attorney for the Issuer is William H. File, III, Esquire, of Beckley, West Virginia.

8. MEETINGS: All actions, ordinances, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction, operation and financing of the Project or the System were authorized or adopted at meetings of the Governing Body duly and regularly or specifically called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes including Chapter 6, Article 9A of the Code of West Virginia, 1931, as amended, and a quorum of duly elected or appointed, qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. INSURANCE: The Issuer will maintain or, as appropriate, will require all contractors to maintain worker's compensation, public liability and property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Ordinance and the Loan Agreement. All insurance for the System required by the Ordinance and the Loan Agreement is in full force and effect.

10. LOAN AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not contain any untrue statements of material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the Loan Agreement, which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading; and (iv) the Issuer is in compliance with the Loan Agreement.

11. SPECIMEN BOND: Attached hereto as Exhibit A is a specimen of the Bond which is identical in all respects with the Bond this day delivered to the Authority and being substantially in the form prescribed in the Ordinance.

12. BOND PROCEEDS: On the date hereof, the Issuer received the sum of $451,950 from the Authority and the DEP, being a portion of the principal amount of the Bonds and more than a de minimus amount of the proceeds of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer from time to time as acquisition and construction of the Project progresses.

13. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond Ordinance, an abstract thereof, determined by the Governing Body to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in the Register Herald, a qualified newspaper published and of general circulation in the Issuer, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer

contemplated the issuance of the Bonds described in the Bond Ordinance, stating that any person interested may appear before the Governing Body at the public hearing held at a public meeting of the Governing Body on July 27, 2004, at 7:30 p.m., prevailing time, in the council chambers of the City Hall in Beckley, West Virginia, and present protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the Recorder of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing and remains in full force and effect.

14. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase, or, if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds.

15. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the PSC Orders entered on May 14, 2004, and September 24, 2004, in Case No. 03-1770-S-CN, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of the PSC Order entered on May 14, 2004, has expired prior to the date hereof. The time for appeal of the PSC Order entered on September 24, 2004, has not expired. The Issuer hereby certifies that it does not intend to appeal the September 24, 2004 Order. The Issuer has received written notification that the PSC Staff does not intend to appeal the September 24, 2004 Order. Such Orders remain in full force and effect.

16. CONFLICTS OF INTEREST: No member, officer or employee of the Issuer or the Sanitary Board has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Bonds, the Ordinance, and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

17. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied with all the requirements of Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended, in the procurement of the engineering services of the Consulting Engineer.

18. VERIFICATION OF SCHEDULE A: The final amended Schedule A attached to the Certificate of Consulting Engineer, with the signature of the Mayor and the Consulting Engineer,

accurately represents the estimated costs of the Project, the sources of funds available to pay the costs of the Project and the costs of financing of the Bonds.

19. CLEAN WATER ACT: The Project as described in the Ordinance complies with Sections 208 and 303(e) of the Clean Water Act.

20. COUNTERPARTS: This Certificate may be executed in counterparts and all counterparts shall be deemed to be the Certificate.

WITNESS our signatures and the official corporate seal of the City of Beckley on this 28th day of September, 2004.

[SEAL]

Signature	Official Title
	Mayor
	Recorder
William H. Fife III	City Attorney

EXHIBIT A

See Specimen Bond (Tab No. 17)

CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 2004 A

CERTIFICATE AS TO ARBITRAGE

The undersigned Mayor of the City of Beckley in Raleigh County, West Virginia (the "Issuer"), being the official of the Issuer duly charged with the responsibility for the issuance of $9,039,000 aggregate principal amount of Sewerage System Revenue Bonds, Series 2004 A, of the Issuer, dated September 28, 2004 (the "Bonds"), hereby certifies as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (collectively, the "Code"). I am the officer of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meaning as set forth in the Bond Ordinance duly passed by the Issuer on July 13, 2004, effective July 27, 2004 and a supplemental resolution thereto dated September 14, 2004 (the " Supplemental Resolution") (the collectively "Bond Ordinance"), authorizing the Bonds.

2. This certificate may be relied upon as the certificate of the Issuer.

3. The Issuer has not been notified by the Internal Revenue Service of any listing or proposed listing of it as an issuer that may not certify its bonds or the certification of which may not be relied upon by holders of obligations of the Issuer or that there is any disqualification of the Issuer by the Internal Revenue Service because a certification made by the Issuer contains a material misrepresentation.

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on September 28, 2004, the date on which the Bonds are to be physically delivered in exchange for more than a de minimis amount of the principal of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. In the Bond Ordinance pursuant to which the Bonds are issued, the Issuer has covenanted that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Bonds which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it shall take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such

exclusion. The Issuer has, therefore, covenanted to not intentionally use any portion of the proceeds of the Bonds to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except as otherwise allowed under Sections 103 and 148 of the Code.

6. The Bonds were sold on September 28, 2004, to the West Virginia Water Development Authority (the "Authority"), pursuant to a loan agreement dated September 16, 2004, by and among the Issuer, the Authority, and the West Virginia Department of Environmental Protection (the "DEP"), for an aggregate purchase price of $9,039,000 (100% of par value), at which time, the Issuer received cost of issuance and reimbursement amount of $451,950 from the Authority and the DEP, being more than a de minimus amount of the principal of the Bonds. No accrued interest has been or will be paid on the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

7. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) paying costs of issuance of the Bonds and related costs.

8. The Issuer shall, on the date hereof or immediately hereafter, enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Bonds for the acquisition and construction of the Project, constituting a substantial binding commitment, or has already done so. The acquisition and construction of the Project and the allocation of the net sale proceeds of the Bonds to expenditures of the Project shall commence immediately and proceed with due diligence to completion and, with the exception of proceeds deposited in the reserve account for the Bonds, if any, all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of acquisition and construction of the Project on or before September 2005. The acquisition and construction of the Project is expected to be completed by September 2006.

9. The total cost of acquisition and construction of the Project (including all costs of issuance of the Bonds) is estimated to be $11,134,503. Sources and uses of funds for the Project are as follows:

SOURCES

Corps of Engineers Grant	$1,000,000
Local Funds	$1,095,503
Gross Proceeds of the Bonds	$9,039,000
Total Sources	$11,134,503

USES

Construction of Project	$11,102,003
Costs of Issuance	$32,500
Total Uses	$11,134,503

The amount of the costs of acquisition and construction of the Project is estimated to be at least equal to the gross proceeds of the Bonds, the grant funds and the Issuer's funds stated above. Except for the proceeds of the Bonds, the grant funds and the Issuer's funds stated above, no other funds of the Issuer will be available to meet costs of the Project, which would constitute "replacement proceeds" within the meaning of Treas. Reg. § 1.148-1 (c), inasmuch as (i) the Issuer does not reasonably expect that the term of the Bonds will be longer than is reasonably necessary for the governmental purposes of the Issuer, (ii) the weighted average maturity of the Bonds does not exceed 120% of the average reasonably expected economic life of the Project, and (iii) there are no amounts that have a sufficiently direct nexus to the Bonds or to the governmental purpose of the Bonds to conclude that the amounts would have been used for that governmental purpose if the proceeds of the Bonds were not used or to be used for that governmental purpose.

10. Pursuant to Article IV of the Bond Ordinance, the following special funds or accounts have been created (or continued pursuant to the Prior Ordinances):

(1) Revenue Fund;

(2) Renewal and Replacement Fund;

(3) Series 2004 A Bonds Construction Trust Fund;

(4) Rebate Fund;

(5) Series 2004 A Bonds Sinking Fund; and

(6) Series 2004 A Bonds Reserve Account.

11. Pursuant to Article V of the Bond Ordinance, the proceeds of the Bonds will be deposited as follows:

(1) Bond proceeds in the amount of $-0- will be deposited in the Series 2004 A Bonds Reserve Account.

(2) The balance of the proceeds of the Bonds will be deposited in the Series 2004 A Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of acquisition and construction of the Project, including costs of issuance of the Bonds and related costs, and for no other purpose.

The Issuer reasonably expects that (i) at least 85% of the net sale proceeds of the Bonds will be spent on the Project within 3 years from the date of issuance of the Bonds; (2) within 6 months of the date of issuance of the Bonds the Issuer will incur a substantial binding obligation to a third party to expend at least 5% of the net sale proceeds of the Bonds on the Project, and (iii) completion of the

Project and allocation of the net sale proceeds of the Bonds to expenditures of the Project will proceed with due diligence. Accordingly, amounts in the Series 2004 A Bonds Construction Trust Fund, if invested, will be invested without yield limitation for a period necessary to complete the Project, not to exceed 3 years. All of such moneys are necessary for such purpose.

Except for "preliminary expenditures" as defined in Treas. Reg. § 1.150-2(f)(2), none of the proceeds of the Bonds will be used to reimburse the Issuer for costs of acquisition and construction of the Project previously incurred and paid by the Issuer with its own funds.

12. Moneys held in the Series 2004 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 2004 A Bonds Reserve Account (if equal to the Series 2004 A Bonds Reserve Requirement) will be withdrawn therefrom, not less than once each year, and, during acquisition and construction of the Project, deposited into the Series 2004 A Bonds Construction Trust Fund, and following completion of the Project, will be deposited in the Series 2004 A Bonds Sinking Fund, and such amounts will be applied as set forth in the Bond Ordinance.

13. Except for the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account, there are no other funds or accounts established or held by the Issuer which are reasonably expected to be used to pay debt service on the Bonds, or which are pledged as collateral for the Bonds and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Bonds, if the Issuer encounters financial difficulties. The Issuer does not expect that moneys in the Renewal and Replacement Fund will be used or needed for payments upon the Bonds, and because such amounts may be expended for other purposes, there is no reasonable assurance that such amounts would be available to meet debt service if the Issuer encounters financial difficulties; thus, such amounts may be invested without yield limitation. Except as provided herein, no funds which have been or will be used to acquire directly or indirectly securities, obligations, annuity contracts, investment-type property or any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved desegregation plan or other investment property producing a yield in excess of the yield on the Bonds, have been or will be pledged to payment of the Bonds. Less than 10% of the stated principal amount of the Bonds, if any, will be deposited in the Series 2004 A Bonds Reserve Account or any other reserve or replacement fund. The amounts deposited in the Series 2004 A Bonds Reserve Account from time to time by the Issuer will not exceed the maximum annual principal and interest on the Bonds and will not exceed 125% of average annual principal and interest on the Bonds. Amounts in the Series 2004 A Bonds Reserve Account, not to exceed 10% of the proceeds of the Bonds, if invested, will be invested without yield limitation. The establishment of the Series 2004 A Bonds Reserve Account is required by the Authority, is vital to its purchase of the Bonds and is reasonably required to assure payments of debt service on the Bonds.

14. Not later than simultaneously with the delivery of the Bonds, the Issuer shall enter into a contract for the acquisition and construction of the Project, and the amount to be expended pursuant to such contract exceeds 5% of the net sale proceeds of the Bonds.

15. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 12 months of the date hereof.

16. The Issuer will comply with the provisions of the Code, for which the effective date precedes the date of delivery of the Bonds to the Authority.

17. With the exception of the amount deposited in the Series 2004 A Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 12 months from the date of issuance thereof.

18. The Series 2004 A Bonds Sinking Fund (other than the Series 2004 A Bonds Reserve Account therein) is intended primarily to achieve a proper matching of payments of debt service on the Bonds each year. The Series 2004 A Bonds Sinking Fund (other than the Series 2004 A Bonds Reserve Account therein) will be depleted at least once a year, except for a reasonable carryover amount not in excess of the greater of $1/12^{th}$ of annual debt service on the Bonds or 1 year's interest earnings on the Series 2004 A Bonds Sinking Fund (other than the Series 2004 A Bonds Reserve Account therein). Except as otherwise allowed, any money deposited in the Series 2004 A Bonds Sinking Fund for payment of the principal of or interest on the Bonds (other than the Series 2004 A Bonds Reserve Account therein) will be spent within a 13-month period beginning on the date of receipt and will be invested without yield limitation, and any moneys received from the investment of amounts held in the Series 2004 A Bonds Sinking Fund (other than in the Series 2004 A Bonds Reserve Account therein) will be spent within a 1-year period beginning on the date of receipt.

19. The amount designated as cost of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

20. All property financed with the proceeds of the Bonds will be held for federal income tax purposes by (or on behalf of) a qualified governmental unit.

21. No more than 10% of the proceeds of the Bonds will be used (directly or indirectly) in any trade or business carried on by, and less than 5% of the proceeds of the Bonds or $5,000,000 have been or will be used to make or finance loans to, any person who is not a governmental unit.

22. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

23. The Issuer shall use the proceeds of the Bonds solely for the costs of acquisition and construction of the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

24. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from treatment afforded by Section 103(a) of the Code by reason of classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and the Regulations promulgated or to be promulgated thereunder in order to assure that the interest on the Bonds is excluded from gross income for federal income tax purposes.

25. The Bonds are not and will not be, in whole or part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

26. The Issuer will rebate to the United States the amount, if any, required by the Code and take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay the required rebate amount and any and all penalties and other amounts from lawfully available sources, and obtain a waiver from the Internal Revenue Service in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

27. The Issuer has retained the right to amend the Bond Ordinance authorizing the issuance of the Bonds if such amendment is necessary to assure compliance with Section 148(f) of the Code or as may otherwise be necessary to assure the exclusion of interest on the Bonds from gross income for federal income tax purposes.

28. The Issuer shall comply with the yield restriction on the proceeds of the Bonds as set forth in the Code.

29. The Issuer has either (a) funded the Series 2004 A Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Series 2004 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until the Series 2004A Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Series 2004 A Bonds Reserve Account and the Series 2004 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

30. The Issuer shall submit to the Authority within 15 days following the end of each bond year a certified copy of its rebate calculation and a certificate with respect thereto or, if the Issuer qualifies for the small governmental issuer exception to rebate, or any other exception thereto, then the Issuer shall submit to the Authority a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the bond year which would make the Bonds subject to rebate.

31. The Issuer expects that no part of the Project financed by the Bonds will be sold or otherwise disposed of prior to the last maturity date of the Bonds.

32. The Issuer covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bonds and the interest thereon. In addition, the Issuer has covenanted to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to fully comply with Section 148(f) of the Code and has covenanted to take such actions, or refrain from taking such actions, as may be necessary to fully comply with Section 148(f) of the Code and the Regulations, regardless of whether such actions may be contrary to any of the provisions of the Bond Ordinance authorizing issuance of the Bonds.

33. The Issuer shall at all times take, and refrain from taking, and shall not fail to take, any and all actions necessary in order to assure the initial and continued tax-exempt status of the Bonds and the interest thereon. Less than 10% of the proceeds of the Bonds will be used, directly or indirectly, for any private business use, and less than 10% of the payment of principal of, or the interest on, such issue, under the terms of such issue or any underlying arrangement, is, directly or indirectly, secured by any interest in property used or to be used for a private business use, or payments in respect of such property, or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Bonds will be used, directly or indirectly, for any private business use which is not related to the governmental use of the proceeds of the Bonds, including the disproportionate related business use of the proceeds of the Bonds, and none of the payment of principal of, or the interest on, such issue, under the terms of any underlying arrangement, is, directly or indirectly, secured by any interest in property used, or to be used for a private business use, payments in respect of such property or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use with respect to such private business use, which is not related to any government use of such proceeds, including the disproportionate business use of the issue of the Bonds. None of the proceeds of the issue of the Bonds will be used, directly or indirectly, to make or finance loans to persons other than governmental units. For purposes of this paragraph, private business use means use, directly or indirectly, in a trade or business carried on by any person, including related persons, other than a governmental unit or other than use as a member of the general public. All of the foregoing shall be determined in accordance with and within the meaning of the Internal Revenue Code of 1986, as amended, including any successor provisions and rules and regulations thereunder (the "Code").

34. The Bonds are a fixed yield issue. No interest or other amount payable on the Bonds (other than in the event of an unanticipated contingency) is determined by reference to (or by reference to an index that reflects) market interest rates or stock or commodity prices after the date of issue.

35. None of the Bonds has a yield-to-maturity more than one-fourth of one percent higher than the yield on the Bonds determined by assuming the Bonds are retired on the date that when used in computing the yield on the Bonds produces the lowest yield.

36. No portion of the proceeds of the Bonds will be used, directly or indirectly, to acquire higher yielding investments or to replace funds which were used, directly or indirectly, to acquire higher yielding investments, all within the meaning of Section 148 of the Code.

37. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with the Bonds and (c) will be paid out of substantially the same source of funds or will have substantially the same claim to be paid out of substantially the same source of funds as the Bonds.

38. The transaction contemplated herein does not represent an exploitation of the difference between taxable and tax-exempt interest rates and the execution and delivery of the Bonds is not occurring sooner than otherwise necessary, nor are the Bonds in principal amounts greater than otherwise necessary or to be outstanding longer than otherwise necessary.

39. On the basis of the foregoing, it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

40. On the date hereof, the undersigned Mayor did officially execute a properly completed IRS Form 8038-G in connection with the Bonds and will cause such executed IRS Form 8038-G to be filed in a timely manner pursuant to Section 149(e) of the Code with the applicable Internal Revenue Service Center. The information contained in such executed Form 8038-G is true, correct and complete.

41. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

42. The Vaughan Law Firm is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Bonds.

43. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

WITNESS my signature on this 28th day of September 2004.

CITY OF BECKLEY

Mayor

CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 2004 A

CERTIFICATE OF RECORDER AS TO TRUTH
AND ACCURACY OF DOCUMENTS DELIVERED

The undersigned duly elected Recorder of the City of Beckley (the "Issuer"), hereby certifies that the copies of the following documents being delivered in connection with the closing of the sale of the City of Beckley Sewerage System Revenue Bonds, Series 2004 A (the "Bonds") are, as of the date hereof, true, complete and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, that said documents have been duly adopted, enacted or entered by the Council of the Issuer, and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

1. Charter.

2. Oaths of Office of Mayor, Recorder and Council Members.

3. Ordinance Creating Sanitary Board.

4. Oaths of Office of Sanitary Board Members.

5. Public Service Commission Order.

6. Infrastructure Council Approval Letter.

7. Loan Agreement.

8. Rate Ordinance.

9. Minutes of Council Meetings regarding All Readings and Public Hearing of the Rate Ordinance.

10. Affidavit of Publication of the Rate Ordinance and Notice of Public Hearing.

11. Petition of Sanitary Board.

12. Bond Ordinance.

13. Supplemental Resolution.

14. Minutes of Council Meetings regarding All Readings and Public Hearing of the Bond Ordinance and Adoption of the Supplemental Resolution.

15. Affidavit of Publication of the Notice of Public Hearing and Abstract of Bond Ordinance.

16. 1998 Bond Ordinance and Supplemental Resolution.

17. 1995 Bond Ordinance and Supplemental Resolution.

18. WDA Consent to Issuance of Parity Bonds.

19. NPDES Permit.

20. Evidence of Insurance.

21. Evidence of Corps of Engineers Grant.

[The rest of this page is intentionally left blank.]

WITNESS my signature and the official seal of the City of Beckley on this 28th day of September, 2004.

Recorder

[SEAL]

CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 2004 A

CERTIFICATE OF CONSULTING ENGINEER

I, Robert G. Belcher, P.E., Registered Professional Engineer, West Virginia License No. 13093, of Chapman Technical Group, St. Albans, West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain additions, betterments and improvements (the "Project") to the existing public sewerage system (the "System") of the City of Beckley (the "Issuer"), to be constructed primarily in Raleigh County, West Virginia, which acquisition and construction are being permanently financed by the above-captioned bonds (the "Bonds") of the Issuer. All capitalized words used herein and not defined herein shall have the same meaning set forth in the Bond Ordinance passed by the Issuer on July 13, 2004, effective July 27, 2004, and supplemented by supplemental resolution (the "Supplemental Resolution") adopted September 14, 2004 (collectively the "Bond Ordinance"), and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection ("DEP"), dated September 16, 2004 (the "Loan Agreement").

2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project; and (ii) paying certain costs of issuance and related costs.

3. To the best of my knowledge, information and belief (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 25 years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule A attached hereto as Exhibit A, and in reliance upon the opinion of William H. File, III, Esquire, of even date herewith, all successful bidders will be required to make required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful

bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) after reasonable inquiry the Issuer has obtained all known permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) in reliance upon the certificate of Smith, Cochran & Hicks, P.L.L.C., CPA, of even date herewith, as of the effective date thereof, the rates and charges for the System as enacted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project, Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this 28th day of September 2004.

[SEAL]

ROBERT G. BELCHER
REGISTERED
No. 13093
STATE OF
WEST VIRGINIA
PROFESSIONAL ENGINEER

CHAPMAN TECHNICAL GROUP

Robert G. Belcher

Robert G. Belcher, P.E.
West Virginia License No. 13093

Smith, Cochran & Hicks, P.L.L.C.
Certified Public Accountants Beckley Bridgeport Charleston Montgomery
405 Capitol Street • Suite 908 • Charleston, West Virginia 25301 • 304-345-1151 • Fax 304-346-6731

September 28, 2004

CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

City of Beckley
P.O. Box 2514
Beckley, WV 25802

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

Ladies and Gentlemen:

We have reviewed the sewer service rates of the City of Beckley (the "Issuer"), enacted by the Issuer on January 27, 2004, and the projected operating expenses and anticipated customer usage provided by Chapman Technical Group, the consulting engineer of the Issuer. It is our opinion that such rates are sufficient (i) to provide for all operating expenses of the sewerage system of the Issuer (the "System"), and (ii) to leave a balance each fiscal year equal to at least 120% of the maximum amount required in any succeeding fiscal year for the payment of principal of and interest on the Issuer's Sewerage System Revenue Bonds, Series 2004 A (the "Series 2004 A Bonds") and all other obligations secured by or payable from revenues of the System on a parity with the Series 2004 A Bonds, including the Issuer's Sewerage System Refunding Revenue Bonds, Series 1995 A, and Sewerage System Revenue Bonds, Series 1998 A (collectively, the "Prior Bonds").

It is further our opinion that the Net Revenues actually derived from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Series 2004 A Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Series 2004 A Bonds, will not be less than 120% of the maximum debt service in any succeeding year on the Prior Bonds and the Series 2004 A Bonds.

Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance authorizing the Series 2004 A Bonds.

Very truly yours,

SMITH, COCHRAN & HICKS, P.L.L.C.

Smith Cochran & Hicks

SCH

CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 2004 A

RECEIPT FOR BONDS

The undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, hereby certifies as follows:

1. On the 28th day of September, 2004, in Charleston, West Virginia, the Authority received the entire original issue of $9,039,000 in aggregate principal amount of the Sewerage System Revenue Bonds, Series 2004 A, of the City of Beckley (the "Issuer"), dated September 28, 2004, issued in the form of one bond, fully registered to the Authority, and numbered AR-1 (the "Bonds").

2. At the time of such receipt of the Bonds, they had been executed by the Mayor of the Issuer and attested by the Recorder of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been impressed upon the Bonds.

WITNESS my signature on this 28 day of September, 2004.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY

Daniel B. Lyonkosky
Authorized Representative

CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 2004 A

RECEIPT FOR BOND PROCEEDS

The undersigned Mayor of the City of Beckley (the "Issuer"), for and on behalf of the Issuer, hereby certifies as follows:

On the 28th day of September 2004, the Issuer received and hereby acknowledges receipt from the West Virginia Water Development Authority (the "Authority"), as the original purchaser of the $9,039,000 City of Beckley Sewerage System Revenue Bonds, Series 2004 A, dated September 28, 2004 (the "Bonds"), of the sum of $451,950, being a portion of the principal amount of the Bonds. The Issuer understands that the remaining proceeds of the Bonds will be advanced to the Issuer from time to time as construction proceeds to completion.

WITNESS my signature on this 28th day of September 2004.

CITY OF BECKLEY

Mayor

Rev. 1/01/02

PAYMENT REQUISITION FORM

1. LOAN RECIPIENT/VENDOR:

NAME: CITY OF BECKLEY

ADDRESS P.O. Box 2494

Beckley, WV 25802-2494

PHONE: 304/256-1760

FEIN: 55-6000144

2. SRF PROJECT C-544230

3. INVOICE NUMBER:

4. PERIOD COVERED BY THIS REQUEST:

FROM (MO/DAY/YR) 3/5/03 TO (MO/DAY/YR) 9/10/04

5. PERCENTAGE OF PHYSICAL CONSTRUCTION COMPLETION 0

SEP 13 2004

CLASSIFICATION	A) APPROVED BUDGET	B) PREVIOUS APPROVED TOTALS	C) THIS REQUEST	D) TOTAL COLUMNS B & C	E) AGENCY USE ONLY
1) CONSTRUCTION					
Contract #1	3,119,409		26,650	26,650	26,650
Contract #2	3,743,986		26,650	26,650	26,650
Contract #3	1,577,666		26,650	26,650	26,650
2) TECHNICAL SVC					
a. Basic	61,600				
b. Engineering (Other)	45,920		19,500	19,500	19,500
c. Inspection	137,919				
3) PLANNING					
4) DESIGN COSTS	320,000		320,000	320,000	320,000
5) LEGAL/FISCAL					
6) ADMINISTRATIVE					
7) LOAN REPAYMENT					
8) CONTINGENCY					
9) INT FINANCE COST					
10) RESERVE FUND					
11) CLOSING COST	32,500		32,500	32,500	32,500
12) SUBTOTAL	9,039,000		451,950	451,950	451,950
13) LESS PREVIOUSLY PAID					0
14) INVOICE AMOUNT					451,950

15) Kenneth E. Richmond
RECIPIENT AUTHORIZED SIGNATURE
DATE: 9/10/04
Ken Richmond, SB General Manager
TYPED OR PRINTED NAME AND TITLE

16)
PERSON PREPARING FORM SIGNATURE
DATE:
Same as 15)
TYPED OR PRINTED NAME AND TITLE

AGENCY USE ONLY:

THIS REQUEST APPROVED BY: WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

PROJECT REVIEWER — DATE 9/15/04

AUTHORIZED OFFICER — DATE

ACCOUNTING CLASSIFICATION - DEP USE ONLY

ACCOUNTING NUMBER:	AMOUNT APPROVED:
350 - 1	$451,950
350 - 2	

RF - 01

AGENCY: ENVIRONMENTAL PROTECTION
TOTAL: $451,950.00

WARRANT #: 1-3645889
DATE: 09/24/04

TRANACTION ID	INVOICE NUMBER	&	PAYEE REFERENCE	PURCHASE ORDER	AMOU
I006565483	1/091004, C544230				$451,950

If you have questions concerning the above, please call 304-759-0507.

REMOVE DOCUMENT ALONG THIS PERFORATION

CTL#15249115

THIS WARRANT HAS MULTIPLE SECURITY FEATURES TO DETER FRAUD AND COUNTERFEITING
VOID UNLESS PRESENTED FOR PAYMENT WITHIN SIX MONTHS

State of West Virginia

Important remittance information on top panel
Remitter: ENVIRONMENTAL PROTECTION
Questions? Contact: MARK DOYLE at 304-759-0507

STATE WARRANT # 1-3645889

SEPTEMBER 24, 2004

PAYEE SANITARY BD CITY OF BECKLEY

**********$451,950.00**

1-3645889

John D Perdue
STATE TREASURER

Glen B Gainer III
AUDITOR

WEST VIRGINIA TREASURY

⑈13645889⑈ ⑆051902322⑆ 5270537822⑈

CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 2004 A

REQUEST AND AUTHORIZATION TO
AUTHENTICATE AND DELIVER THE BONDS

September 28, 2004

J. P. Morgan Trust Company,
National Association
One Oxford Centre, Suite 1100
301 Grant Street
Pittsburgh, PA 15219

Ladies and Gentlemen:

We herewith hand to you, duly executed, the $9,039,000 Sewerage System Revenue Bonds, Series 2004 A, in the form of one bond, numbered AR-1, dated September 28, 2004 (the "Bonds"), of the City of Beckley (the "Issuer"), authorized to be issued under and pursuant to a Bond Ordinance duly passed by the Issuer on July 13, 2004, effective July 27, 2004, and a Supplemental Resolution thereto duly adopted by the Issuer on September 14, 2004.

You are hereby requested and authorized to register, authenticate and deliver the Bonds on behalf of the Issuer to the West Virginia Water Development Authority.

CITY OF BECKLEY

Mayor

(SEAL)

Attest:

Recorder

CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 28th day of September, 2004, by and between the CITY OF BECKLEY, a municipal corporation (the "Issuer"), and J. P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION, Pittsburgh, Pennsylvania (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its $9,039,000 Sewerage System Revenue Bonds, Series 2004 A (the "Bonds"), in the form of one bond, numbered AR-1, in fully registered form, pursuant to a Ordinance duly passed by the Issuer on July 13, 2004, effective July 27, 2004, and a Supplemental Resolution duly adopted September 14, 2004 (collectively, the "Bond Ordinance");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Ordinance, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Ordinance provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Ordinance and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Ordinance and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so as the Issuer advises it in writing and in accordance with generally accepted corporate trust industry standards.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered and to reimburse the Registrar for its expenses as provided in the annexed Schedule 1.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Ordinance with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Ordinance, the terms of the Ordinance shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Ordinance will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective address:

ISSUER:

City of Beckley
P.O. Box 2514
Beckley, WV 25802
Attention: Mayor

REGISTRAR:

J. P. Morgan Trust Company, National Association
One Oxford Centre, Suite 1100
301 Grant Street
Pittsburgh, PA 15219
Attention: Institutional Trust Services

The Issuer and the Registrar shall notify the other in writing of any change of address.

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Ordinance.

9. The Registrar undertakes to perform only such duties as are expressly set forth in this Registrar's Agreement and in the Ordinance. The duties and responsibilities of the Registrar hereunder shall be determined solely by the express provisions of this Registrar's Agreement and the Ordinance, and no further duties or responsibilities shall be implied. The Registrar shall not have any liability under, nor duty to inquire into the terms and provisions of any agreement or instructions, other than as outlined in the Registrar's Agreement. The Registrar may rely and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party. The Registrar shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document. The Registrar shall not be liable for any action taken or omitted by it in good faith unless a court of competent jurisdiction determines that the Registrar's grossly negligent or willful misconduct was the primary cause of any loss to the Issuer. The Registrar shall not incur any liability for following the instructions herein contained or expressly provided for, or written instructions given by the Issuer. In the administration of this Registrar's Agreement and in acting under the Ordinance, the Registrar may execute any of its powers and perform its duties hereunder direcly or through agents or attorneys and may, consult with counsel, accountants and other skilled persons to be selected and

retained by it. The Registrar shall not be liably for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons. Any corporation or association into which the Registrar in its individual capacity may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Registrar in its individual capacity shall be a party, or any corporation or association to which all or substantially all the municipal corporate trust business of the Registrar in its individual capacity may be sold or otherwise transferred, shall be the Registrar under this Registrar's Agreement without further act. The Issuer covenants and agrees to indemnify and hold the Registrar and its directors, officers, agents and employees (collectively, the "Indemnitiees") harmless from and against any and all liabilities, losses, damages, fines, suits, actions, demands, penalties, costs and expenses, including out-of-pocket incidental expenses, legal fees and expenses, the allocated costs and expenses of in-house counsel and legal staff and the costs and expenses of defending or preparing to defend against any claim ("Losses") that may be imposed on, incurred by, or asserted against, the Indemnitees or any of them for following any instruction or other direction upon which the Registrar is authorized to rely pursuant to the terms of this Registrar's Agreement or the Ordinance. In addition to and not in limitation of the immediately preceding sentence, the Issuer also covenants and agrees to indemnify and hold the indemnities and each of them harmless from and against any and all Losses that may be imposed on, incurred by, or asserted against the Indemnitees or any of them in connection with or arising out of the Registrar's performance under this Registrar's Agreement and the Ordinance provided the Registrar has not acted with gross negligence or engaged in willful misconduct. The provisions of this Section 9 shall survive the termination of this Registrar's Agreement and the resignation or removal of the Registrar for any reason. Anything in this Agreement to the contrary notwithstanding, in no event shall the Registrar be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Registrar has been advised of such loss or damage and regardless of the form of action. In the event that the Registrar shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of this Registrar's Agreement or the Ordinance, it shall be entitled to refrain from taking any action until it shall be directed otherwise in writing by the Issuer or by a final order or judgment of a court of competent jurisdiction. The Registrar and any of its affiliates may become owner of or may deal in the Bonds and have other fiduciary or commercial relationships with the Issuer, as fully and with the same rights as it it were not the Registrar under this Registrar's Agreement and the Ordinance.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the date first above-written.

CITY OF BECKLEY

Mayor

J. P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION

Authorized Officer

SCHEDULE 1

Acceptance Fee: $1,000.00

(This fee includes a one-time legal fee of $500.00)

EXHIBIT A

See Bond Ordinance (Tab No. 13)
See Supplemental Resolution (Tab No. 14)

CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 2004 A

CERTIFICATE OF REGISTRATION OF BONDS

J. P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION, Pittsburgh, Pennsylvania, as Registrar (the "Registrar"), hereby certifies that on the date hereof, the single, fully registered Sewerage System Revenue Bonds, Series 2004 A, of the City of Beckley (the "Issuer"), dated September 28, 2004, in the principal amount of $9,039,000, and numbered AR-1, was registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature on this 28th day of September, 2004.

J. P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION, as Registrar

Authorized Officer

CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BONDS,
SERIES 2004 A

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

BANK ONE, WEST VIRGINIA, NATIONAL ASSOCIATION, Beckley, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of the City of Beckley (the "Issuer"), passed by the Issuer on July 13, 2004, effective July 27, 2004, and a Supplemental Resolution adopted by the Issuer on September 14, 2004 (collectively, the "Ordinance"), authorizing the issuance of the City of Beckley Sewerage System Revenue Bonds, Series 2004 A, in the aggregate principal amount of $9,039,000, dated September 28, 2004, and agrees to serve as Depository Bank, all as set forth in the Ordinance.

Witness my signature on this 28th day of September, 2004.

BANK ONE, WEST VIRGINIA, NATIONAL ASSOCIATION

Nancy Kissinger
Authorized Officer

M0383005.1

WEST VIRGINIA MUNICIPAL BOND COMMISSION
Suite 500
8 Capitol Street, Charleston, WV 25301
(304) 558-3971

NEW ISSUE REPORT FORM
Date of Report: September 28, 2004

ISSUE: City of Beckley Sewerage System Revenue Bonds, Series 2004 A

ADDRESS: P.O. Box 2514, Beckley, WV 25802 COUNTY: Raleigh

PURPOSE OF ISSUE: New Money X
Refunding ____ Refunds issue(s) dated:

ISSUE DATE: September 28, 2004 CLOSING DATE: September 28, 2004

ISSUE AMOUNT: $9,039,000 RATE: 2%; Administrative Fee: 1%

1st DEBT SERVICE DUE: September 1, 2006 1st PRINCIPAL DUE: September 1, 2006

1st DEBT SERVICE AMOUNT: $137,366.01 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Vaughan Law Firm
Contact Person: Dennis R. Vaughan, Jr., Esquire
Phone: (304) 342-3900

UNDERWRITERS COUNSEL:
Contact Person:
Phone:

CLOSING BANK: Bank One, West Virginia, National Association
Contact Person: Nancy Kissinger
Phone: (304) 256-2157

ESCROW TRUSTEE:
Contact Person:
Phone:

KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: Kenneth W. Richmond
Position: General Manager
Phone: (304) 256-1760

OTHER: WVDEP
Contact Person: Rosalie Brodersen
Function: Program Manager
Phone: (304) 558-0637

DEPOSITS TO MBC AT CLOSE: _____
By _____ Wire
_____ Check

Accrued Interest: $
Capitalized Interest: $
Reserve Account: $
Other: _____ $

REFUNDS & TRANSFERS BY MBC AT CLOSE:
By _____ Wire
_____ Check
_____ IGT

To Escrow Trustee: $
To Issuer: $
To Cons.Invest.Fund $
To Other: _____ $

NOTES:

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required:
Transfers Required:

TRANSACTION REPORT

P.01

SEP-28-2004 TUE 10:39 AM

FOR: WV WATER DEV AUTHORITY 3045580299

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
SEP-28	10:38 AM	MUNICIPAL BOND COMM	31"	1	SEND	OK	220	

TOTAL : 31S PAGES: 1

WEST VIRGINIA MUNICIPAL BOND COMMISSION
Suite 500
8 Capitol Street, Charleston, WV 25301
(304) 558-3971

NEW ISSUE REPORT FORM
Date of Report: September 28, 2004

ISSUE: City of Beckley Sewerage System Revenue Bonds, Series 2004 A

ADDRESS: P.O. Box 2514, Beckley, WV 25802 COUNTY: Raleigh

PURPOSE OF ISSUE: New Money X
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1st DEBT SERVICE AMOUNT: $137,366.01 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Vaughan Law Firm
Contact Person: Dennis R. Vaughan, Jr., Esquire
Phone: (304) 342-3900

UNDERWRITERS COUNSEL:
Contact Person:
Phone:

CLOSING BANK: Bank One, West Virginia, National Association
Contact Person: Nancy Kissinger
Phone: (304) 256-2157

ESCROW TRUSTEE:
Contact Person:
Phone:

KNOWLEDGEABLE ISSUER CONTACT:

OTHER: WVDEP

VAUGHAN LAW FIRM
Attorneys and Counsellors at Law

DENNIS R. VAUGHAN, JR.

WEST VIRGINIA MUNICIPAL LEAGUE CENTER
2020 KANAWHA BOULEVARD, EAST
CHARLESTON, WEST VIRGINIA 25311

TELEPHONE (304) 342-3900
TELECOPY (304) 344-2386

September 28, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Internal Revenue Service
Internal Revenue Service Center
Ogden, Utah 84201

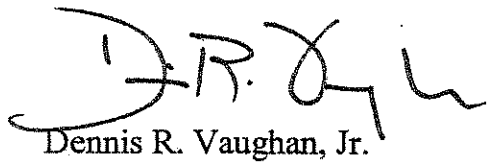
Re: City of Beckley
Sewerage System Revenue Bonds, Series 2004 A

Ladies and Gentlemen:

Enclosed herewith is a completed and executed Internal Revenue Service Form 8038-G and a file copy thereof with regard to the above-captioned issue. Please file the original form in the appropriate Internal Revenue Service records and return the copy marked in red as the "File Copy" to me (after acknowledging receipt of the same) in the enclosed self-addressed, stamped envelope.

Thank you for your attention to this matter.

Very truly yours,



Dennis R. Vaughan, Jr.

DRVJR:ec

Enclosure

cc: Ken Richmond *(w/ enc.)*

Form **8038-G** (Rev. November 2000) Department of the Treasury Internal Revenue Service

Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)

▶ See separate Instructions.

Caution: *If the issue price is under $100,000, use Form 8038-GC.*

OMB No. 1545-0720

Part I Reporting Authority

If **Amended Return**, check here ▶ ☐

1 Issuer's name: **City of Beckley**

2 Issuer's employer identification number: **55 6000144**

3 Number and street (or P.O. box if mail is not delivered to street address): **P. O. Box 2514** Room/suite

4 Report number: **3 04-1**

5 City, town, or post office, state, and ZIP code: **Beckley, West Virginia 25802**

6 Date of issue: **09/28/2004**

7 Name of issue: **City of Beckley Sewerage System Revenue Bonds, Series 2004 A**

8 CUSIP number: **n/**

9 Name and title of officer or legal representative whom the IRS may call for more information: **Emmett S. Pugh, III, Mayor**

10 Telephone number of officer or legal representative: **(304) 246-1750**

Part II Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule

11	☐ Education	11	
12	☐ Health and hospital	12	
13	☐ Transportation	13	
14	☐ Public safety	14	
15	☑ Environment (including sewage bonds)	15	9,039,000
16	☐ Housing	16	
17	☐ Utilities	17	
18	☐ Other. Describe ▶	18	

19 If obligations are TANs or RANs, check box ▶ ☐ . If obligations are BANs, check box ▶ ☐

20 If obligations are in the form of a lease or installment sale, check box ▶ ☐

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	06/01/2026	$ 9,039,000	$ 9,039,000	12.463 years	2.0109632 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22	Proceeds used for accrued interest			22	0
23	Issue price of entire issue (enter amount from line 21, column (b))			23	9,039,000
24	Proceeds used for bond issuance costs (including underwriters' discount)	24	32,500		
25	Proceeds used for credit enhancement	25			
26	Proceeds allocated to reasonably required reserve or replacement fund	26			
27	Proceeds used to currently refund prior issues	27			
28	Proceeds used to advance refund prior issues	28			
29	Total (add lines 24 through 28)			29	32,500
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)			30	9,006,500

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)

31 Enter the remaining weighted average maturity of the bonds to be currently refunded ▶ _____ years

32 Enter the remaining weighted average maturity of the bonds to be advance refunded ▶ _____ years

33 Enter the last date on which the refunded bonds will be called ▶ _____

34 Enter the date(s) the refunded bonds were issued ▶

Part VI Miscellaneous

35	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35	
36a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	
b	Enter the final maturity date of the guaranteed investment contract ▶		
37	Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a	

b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☐ and enter the name of the issuer ▶ _____ and the date of the issue ▶ _____

38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ▶ ☐

39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶ ☐

40 If the issuer has identified a hedge, check box ▶ ☐

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature of issuer's authorized representative — Date: 9-28-04

Emmett S. Pugh, III, Mayor
Type or print name and title

For Paperwork Reduction Act Notice, see page 2 of the Instructions.

Cat. No. 63773S Form **8038-G** (Rev. 11-2000)

STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
414 SUMMERS STREET, SECOND FLOOR
CHARLESTON, WV 25301

RECEIVED
AUG 11 2004

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
WATER POLLUTION CONTROL PERMIT

NPDES PERMIT NO.: WV0023183
SUBJECT: Sewage

ISSUE DATE: July 30, 2004
EFFECTIVE DATE : August 29, 2004
EXPIRATION DATE: June 30, 2009
SUPERSEDES: Permit No. WV0023183 dated June 30, 2000

LOCATION: BECKLEY	Raleigh	Lower New River
(City)	(County)	(Drainage Basin)

See the next page for a list of Outlets.

TO WHOM IT MAY CONCERN:

This is to certify that: BECKLEY CITY OF
PO BOX 2494
BECKLEY, WV 25802-2494

is hereby granted a West Virginia NPDES Water Pollution Control Permit to:
operate and maintain an existing wastewater collection system, an existing 3.5 million gallon per day [MGD] Conventional Activated Sludge [CAS] wastewater treatment facility, and an existing 4.5 MGD Sequential Batch Reactor [SBR] wastewater treatment facility, [The two(2) wastewater treatment plants operate in unison to provide a total wastewater treatment capacity of 8.0 million gallons per day], which are further described as follows:

The wastewater collection system is comprised of approximately 674,248 linear feet of gravity sewer lines of various sizes [four(4) inch diameter, six(6) inch diameter, eight(8) inch diameter, 10 inch diameter, 12 inch diameter, 15 inch diameter, 18 inch diameter, 21 inch diameter, 24 inch diameter, and 30 inch diameter], 2,200 manholes, 600 cleanouts, 16 lift stations, approximately 78,128 linear feet of force main lines of various sizes [two[2) inch diameter, three(3) inch diameter, four(4) inch diameter, six(6) inch diameter, eight(8) inch diameter, and 16 inch diameter], and all requisite appurtenances.

The 3.5 million gallons per day CAS wastewater treatment plant is comprised of a mechanical bar screen, a manual bar screen, grit removal and handling facilities, a vactor truck dumping station, a septage receiving station with a volume of 6,000 gallons, an influent distribution box, a plant lift station utilized as a transfer lift station for excess wastewater flows, filtrate, and washwater to the sequential batch reactor wastewater treatment plant, (2) primary clarifiers - one(1) with a volume of 297,400 gallons and one(1) with a volume of 429,600 gallons and both with a surface area of 4,418 square feet each, six(6) aeration chambers with a total volume of 1,131,000 gallons, three(3) secondary clarifiers with a total volume of 761,000 gallons, two(2) anaerobic digesters with a total volume of 817,475 gallons, two(2) sludge holding tanks with a volume of 80,200 gallons each, two(2) 1.5 meter combination sludge thickening- dewatering belt presses, a sludge pumping system, and all requisite appurtenances.

The 4.5 million gallons per day SBR wastewater treatment plant is comprised of an influent distribution box for the diversion of the wastewater flow from the Whitestick Pump Station to this plant, two(2) reactor chambers with a total volume of 4,398,240 gallons which function as an integral clarifier with a surface area of 14,000 square feet each, an ultraviolet disinfection equalization chamber, ultraviolet disinfection facilities utilized by both

plants, cascade post aeration facilities, flow measurement, a supervisory control and data acquisition and telemetry system, and all requisite appurtenances.

These facilities are to serve a population equivalent of approximately 88,900 persons in the City of Beckley, the Town of Mabscott, the Raleigh County Airport Authority service area, a portion of the North Beckley Public Service District, the Federal Bureau of Prison's correctional institution, and environs, and discharge treated wastewater to Piney Creek [approximately 10.5 miles from its mouth] of the New River of the Kanawha River.

Also, to implement a Publicly Owned Treatment Work Pretreatment Program.

To acquire, construct, install, operate and maintain a wastewater collection system to be comprised of approximately 1,452 linear feet of six(6) inch diameter gravity sewer line, 2,726 linear feet of eight(8) inch diameter gravity sewer line, 186 linear feet of 10 inch diameter gravity sewer line, 416 linear feet of 12 inch diameter gravity sewer line, 2,973 linear feet of 18 inch diameter gravity sewer line, 16,956 linear feet of 24 inch diameter gravity sewer line, 10,721 linear feet of 30 inch diameter gravity sewer line, replace 112 existing manholes, construct new 84 manholes, and all necessary requisite appurtenances. The wastewater collection system is to convey wastewater to the City of Beckley's wastewater treatment facility for ultimate treatment and disposal from Outlet No. 001.

Also, to acquire, construct, install, operate and maintain a wastewater collection system to be comprised of approximately 534 linear feet of six(6) inch diameter gravity sewer line, 621 linear feet of eight(8) inch diameter gravity sewer line, 11 manholes, and all necessary requisite appurtenances. The wastewater collection system is to convey wastewater to the City of Beckley's wastewater treatment facility for ultimate treatment and disposal from Outlet No. 001 and to serve approximately 20 new customers in the Raleigh Island area.

The wastewater collection system extensions / replacements shall be constructed in accordance with the plans, specifications, and reports approved by the Division of Water and Waste Management - Construction Assistance. A further description of these documents is presented as follows:

PLANS, SPECIFICATIONS, & REPORTS:
Prepared by: Chapman Technical Group
SRF Project No.: C-544-230
Approvable Date: April 26, 2004

This permit is subject to the following terms and conditions :
The information submitted on and with Permit Application No. WV0023183 dated the 24th day of December 2003, additional information received on March 1, 2004 and March 29, 2004, are all hereby made terms and conditions of this Permit with like effect as if all such permit application information were set forth herein and with other conditions set forth in Sections A, B, C, D, E, F, and Appendix A.

The validity of this permit is contingent upon the payment of the applicable annual permit fee, as required by Chapter 22, Article 11, Section 10 of the Code of West Virginia.

Dischargeable Unit	Latitude	Longitude	Receiving Stream	Dist. to Stream Mouth (In Mile)	Milepost
001	37°46'15"	81°09'11"	PINEY CK	10.5	N/A
006	37°46'16"	81°09'16"	PINEY CK	N/A	N/A
007	37°46'19"	81°09'13"	PINEY CK	N/A	N/A
008	37°46'24"	81°09'19"	PINEY CK	N/A	N/A
C002	37°47'25"	81°10'14"	WHITESTICK CK -- No DMRs Required	N/A	N/A
S01	37°46'15"	81°09'11"	N/A	N/A	N/A

A.001 DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Summer May 1-Oct 31

During the period beginning August 29, 2004 and lasting through midnight June 30, 2009 the permittee is authorized to discharge from Outlet Number(s) 001 (Sanitary)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations							Monitoring Requirements	
	Quantity		Units		Other Units		Units	Measurement Frequency	Sample Type
Flow,in Conduit or thru plant (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mgd	Continuous	measured
Refer to condition C.9. and C.10.									
BOD, 5-Day 20 Deg.C (Summer May 1-Oct 31) (ML-B)	2002 Avg. Monthly	3002 Max. Daily	Lbs/Day	N/A	30 Avg. Monthly	45 7 Day Average	mg/l	5/week	8 hr comp
Refer to condition C.4.									
Total Suspended Solids (Summer May 1-Oct 31) (ML-A)	2002 Avg. Monthly	3002 Max. Daily	Lbs/Day	N/A	30 Avg. Monthly	45 7 Day Average	mg/l	5/week	8 hr comp
Refer to condition C.4.									
Ammonia Nitrogen (Summer May 1-Oct 31) (ML-A)	247 Avg. Monthly	494 Max. Daily	Lbs/Day	N/A	3.7 Avg. Monthly	7.4 Max. Daily	mg/l	5/week	8 hr comp
Coliform, Fecal (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	200 Mo. Geo. Mean	400 Max. Daily	Cnts/100ml	5/week	Grab
Refer to condition C.11.									
pH (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	6 Inst. Min.	N/A	9 Inst. Max.	S.U.	5/week	Grab
Dissolved Oxygen (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	5 Min.	N/A	N/A	mg/l	5/week	Grab
Arsenic, Total (As AS) (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Toxicity, Chronic Daphnia (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	TUc	1/year	24 hr Composite
Refer to condition C.14.									

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

Effluent samples shall be collected at a location or as near as possible to the point of discharge. Effluent BOD5 samples shall be properly reseeded, in accordance with the approved procedures, prior to analysis.

This discharge shall not cause violation of Title 46, Series 1, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.001 DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Summer May 1-Oct 31

During the period beginning August 29, 2004 and lasting through midnight June 30, 2009 the permittee is authorized to discharge from Outlet Number(s) 001 (Sanitary)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations							Monitoring Requirements	
	Quantity		Units		Other Units		Units	Measurement Frequency	Sample Type
Toxicity, Chronic Pimephales (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	TUc	1/year	24 hr Composite
Refer to condition C.14.									
Zinc, Total Recoverable (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Lead, Total Recoverable (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Copper, Total Recoverable (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Cyanide, Weak Acid Dissociable (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	Grab
Cadmium, Total Recoverable (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Mercury, Total (As Hg) (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Nickel, Total Recoverable (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Phosphorus, Total (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Refer to condition C.13.									

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

Effluent samples shall be collected at a location or as near as possible to the point of discharge. Effluent BOD5 samples shall be properly reseeded, in accordance with the approved procedures, prior to analysis.

This discharge shall not cause violation of Title 46, Series 1, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.001 DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Summer May 1-Oct 31

During the period beginning August 29, 2004 and lasting through midnight June 30, 2009 the permittee is authorized to discharge from Outlet Number(s) 001 (Sanitary)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations							Monitoring Requirements	
	Quantity		Units		Other Units		Units	Measurement Frequency	Sample Type
BOD,5-day %Rem,wet weather (Summer May 1-Oct 31) (ML-K)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	N/A	Percent	4/Month	Calculated
Refer to condition C.8.									
BOD,5-day % Rem,dry weather (Summer May 1-Oct 31) (ML-K)	N/A	N/A	N/A	N/A	85 Avg. Monthly	N/A	Percent	4/Month	Calculated
Refer to condition C.8.									
Solids,Susp.% Rem,wet weather (Summer May 1-Oct 31) (ML-K)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	N/A	Percent	4/Month	Calculated
Refer to condition C.8.									
Solids,Susp.% Rem,dry weather (Summer May 1-Oct 31) (ML-K)	N/A	N/A	N/A	N/A	85 Avg. Monthly	N/A	Percent	4/Month	Calculated
Refer to condition C.8.									
Chromium, Hexavalent (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Nitrogen, Total (AS N) (Summer May 1-Oct 31) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Refer to condition C.13.									

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

Effluent samples shall be collected at a location or as neat as possible to the point of discharge. Effluent BOD5 samples shall be properly reseeded, in accordance with the approved procedures, prior to analysis.

This discharge shall not cause violation of Title 46, Series 1, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.001 DISCHAR LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Winter Nov 1-Apr 30

During the period beginning August 29, 2004 and lasting through midnight June 30, 2009 the permittee is authorized to discharge from Outlet Number(s) 001 (Sanitary)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations Quantity		Units	Discharge Limitations Other Units			Units	Monitoring Requirements Measurement Frequency	Monitoring Requirements Sample Type
Flow,in Conduit or thru plant (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mgd	Continuous	measured
Refer to condition C.9. and C.10.									
BOD, 5-Day 20 Deg.C (Winter Nov 1-Apr 30) (ML-B)	2002 Avg. Monthly	3002 Weekly Avg.	Lbs/Day	N/A	30 Avg. Monthly	45 7 Day Average	mg/l	5/week	8 hr comp
Refer to condition C.4.									
Total Suspended Solids (Winter Nov 1-Apr 30) (ML-A)	2002 Avg. Monthly	3002 Max. Daily	Lbs/Day	N/A	30 Avg. Monthly	45 7 Day Average	mg/l	5/week	8 hr comp
Refer to condition C.4.									
Ammonia Nitrogen (Winter Nov 1-Apr 30) (ML-A)	394 Avg. Monthly	787 Max. Daily	Lbs/Day	N/A	5.9 Avg. Monthly	11.8 Max. Daily	mg/l	5/week	8 hr comp
Coliform, Fecal (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	200 Mo. Geo. Mean	400 Max. Daily	Cnts/100ml	5/week	Grab
Refer to condition C.11.									
pH (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	6 Inst. Min.	N/A	9 Inst. Max.	S.U.	5/week	Grab
Dissolved Oxygen (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	5 Min.	N/A	N/A	mg/l	5/week	Grab
Arsenic, Total (As AS) (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Toxicity, Chronic Daphnia (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	TUc	1/year	24 hr Composite
Refer to condition C.14.									

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

Effluent samples shall be collected at a location or as near as possible to the point of discharge. Effluent BOD5 samples shall be properly reseeded, in accordance with the approved procedures, prior to analysis.

This discharge shall not cause violation of Title 46, Series 1, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.001 DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Winter Nov 1-Apr 30

During the period beginning August 29, 2004 and lasting through midnight June 30, 2009 the permittee is authorized to discharge from Outlet Number(s) 001 (Sanitary)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations							Monitoring Requirements	
	Quantity		Units		Other Units		Units	Measurement Frequency	Sample Type
Toxicity, Chronic Pimephales (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	TUc	1/year	24 hr Composite
Refer to condition C.14.									
Zinc, Total Recoverable (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Lead, Total Recoverable (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Copper, Total Recoverable (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Cyanide, Weak Acid Dissociable (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	Grab
Cadmium, Total Recoverable (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Mercury, Total (As Hg) (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Nickel, Total Recoverable (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Phosphorus, Total (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Refer to condition C.13.									

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

Effluent samples shall be collected at a location or as near as possible to the point of discharge. Effluent BOD5 samples shall be properly reseeded, in accordance with the approved procedures, prior to analysis.

This discharge shall not cause violation of Title 46, Series 1, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.001 DISCHA LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Winter Nov 1-Apr 30

During the period beginning August 29, 2004 and lasting through midnight June 30, 2009 the permittee is authorized to discharge from Outlet Number(s) 001 (Sanitary)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations							Monitoring Requirements	
	Quantity		Units		Other Units		Units	Measurement Frequency	Sample Type
BOD,5-day %Rem,wet weather (Winter Nov 1-Apr 30) (ML-K)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	N/A	Percent	4/Month	Calculated
Refer to condition C.8.									
BOD,5-day % Rem,dry weather (Winter Nov 1-Apr 30) (ML-K)	N/A	N/A	N/A	N/A	85 Avg. Monthly	N/A	Percent	4/Month	Calculated
Refer to condition C.8.									
Solids,Susp.% Rem,wet weather (Winter Nov 1-Apr 30) (ML-K)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	N/A	Percent	4/Month	Calculated
Refer to condition C.8.									
Solids,Susp.% Rem,dry weather (Winter Nov 1-Apr 30) (ML-K)	N/A	N/A	N/A	N/A	85 Avg. Monthly	N/A	Percent	4/Month	Calculated
Refer to condition C.8.									
Chromium, Hexavalent (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Nitrogen, Total (AS N) (Winter Nov 1-Apr 30) (ML-A)	N/A	N/A	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	mg/l	1/quarter	8 hr comp
Refer to condition C.13.									

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

Effluent samples shall be collected at a location or as near as possible to the point of discharge. Effluent BOD5 samples shall be properly reseeded, in accordance with the approved procedures, prior to analysis.

This discharge shall not cause violation of Title 46, Series 1, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.006 DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning August 29, 2004 and lasting through midnight June 30, 2009 the permittee is authorized to discharge from Outlet Number(s) 006 (Storm Water Runoff)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations							Monitoring Requirements	
	Quantity		Units	Other Units			Units	Measurement Frequency	Sample Type
BOD, 5-Day 20 Deg.C (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Total Suspended Solids (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Ammonia Nitrogen (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Coliform, Fecal (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	Cnts/100ml	1/6 months	Grab
pH (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	Rpt Only Inst. Min.	N/A	Rpt Only Inst. Max.	S.U.	1/6 months	Grab
Chem. Oxygen Demand (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Oil and Grease, Hexane EXTR. (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):
Stormwater effluent discharge samples shall be collected at or as near as possible to the point of discharge to Piney Creek.

This discharge shall not cause violation of Title 46, Series 1, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.007 DISCHA . LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning August 29, 2004 and lasting through midnight June 30, 2009 the permittee is authorized to discharge from Outlet Number(s) 007 (Storm Water Runoff)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations							Monitoring Requirements	
	Quantity		Units		Other Units		Units	Measurement Frequency	Sample Type
BOD, 5-Day 20 Deg.C (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Total Suspended Solids (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Ammonia Nitrogen (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Coliform, Fecal (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	Cnts/100ml	1/6 months	Grab
pH (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	Rpt Only Inst. Min.	N/A	Rpt Only Inst. Max.	S.U.	1/6 months	Grab
Chem. Oxygen Demand (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Oil and Grease, Hexane EXTR. (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

Stormwater effluent discharge samples shall be collected at or as near as possible to the point of discharge to Piney Creek.

This discharge shall not cause violation of Title 46, Series 1, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.008 DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning August 29, 2004 and lasting through midnight June 30, 2009 the permittee is authorized to discharge from Outlet Number(s) 008 (Storm Water Runoff)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations							Monitoring Requirements	
	Quantity		Units		Other Units		Units	Measurement Frequency	Sample Type
BOD, 5-Day 20 Deg.C (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Total Suspended Solids (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Ammonia Nitrogen (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Coliform, Fecal (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	Cnts/100ml	1/6 months	Grab
pH (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	Rpt Only Inst. Min.	N/A	Rpt Only Inst. Max.	S.U.	1/6 months	Grab
Chem. Oxygen Demand (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab
Oil and Grease, Hexane EXTR. (Year Round) (ML-1) Refer to condition C.17.	N/A	N/A	N/A	N/A	N/A	Rpt Only Max. Daily	mg/l	1/6 months	Grab

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):
Stormwater effluent discharge samples shall be collected at or as near as possible to the point of discharge to Piney Creek.

This discharge shall not cause violation of Title 46, Series 1, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.S01 SEWAG SLUDGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning August 29, 2004 and lasting through midnight June 30, 2009 the permittee is authorized to dispose sludge in accordance with the following from Outlet Number S01 (Sludge)

Effluent Characteristic	Quantity		Units	Limitations	Other Units		Units	Monitoring Requirements Measurement Frequency	Sample Type
Coliform, Fecal (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	col/gr	1/quarter	Grab
pH (Year Round) (ML-+)	N/A	N/A	N/A	Rpt Only Min.	N/A	Rpt Only Max.	S.U.	1/quarter	Grab
Arsenic, Sludge Tot. Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	20 Max.	mg/kg	1/quarter	1/wk Comp
Cadmium,Sludge,Tot Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	39 Max.	mg/kg	1/quarter	1/wk Comp
Chromium, Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	1000 Max.	mg/kg	1/quarter	1/wk Comp
Copper,Sludge,Tot,Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	1500 Max.	mg/kg	1/quarter	1/wk Comp
Lead, Dry. Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	250 Max.	mg/kg	1/quarter	1/wk Comp
Mercury, Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	10 Max.	mg/kg	1/quarter	1/wk Comp
Molybdenum,Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	18 Max.	mg/kg	1/quarter	1/wk Comp

A.S01 SEWAGE SLUDGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning August 29, 2004 and lasting through midnight June 30, 2009 the permittee is authorized to dispose sludge in accordance with the following from Outlet Number S01 (Sludge)

Effluent Characteristic	Limitations							Monitoring Requirements	
	Quantity		Units		Other Units		Units	Measurement Frequency	Sample Type
Nickel, Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	200 Max.	mg/kg	1/quarter	1/wk Comp
Selenium,Sludge,Tot. Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	36 Max.	mg/kg	1/quarter	1/wk Comp
Zinc, Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	2800 Max.	mg/kg	1/quarter	1/wk Comp
Calcium, Total (as Ca) (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/quarter	1/wk Comp
Solids, Total Sludge Percent (Year Round) (ML-+)	N/A	N/A	N/A	Rpt Only Min.	Rpt Only Avg.	Rpt Only Max.	Percent	1/quarter	1/wk Comp
Potassium, Sludge Tot. Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/quarter	1/wk Comp
Phosphorus,Sludge,Tot,Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/quarter	1/wk Comp
Nitrogen, Ammonia Tot. Dry Wt. (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/quarter	1/wk Comp
Nitrogen, Sludge Tot. Dry Wt (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/quarter	1/wk Comp

A.S01 SEWAGE SLUDGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning August 29, 2004 and lasting through midnight June 30, 2009 the permittee is authorized to dispose sludge in accordance with the following from Outlet Number S01 (Sludge)

Effluent Characteristic	Limitations							Monitoring Requirements	
	Quantity		Units		Other Units		Units	Measurement Frequency	Sample Type
Organic Nitrogen (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/quarter	1/wk Comp
Magnesium,Tot (as Mg) (Year Round) (ML-+)	N/A	N/A	N/A	N/A	N/A	Rpt Only Max.	mg/kg	1/quarter	1/wk Comp

B. SCHEDULE OF COMPLIANCE

1. **The permitee shall achieve compliance with the provisions for waste treatment and the monitoring requirements specified in the permit in accordance with the following schedule :**

   Effective date of permit.

2. **Reports of compliance or non-compliance with, and progress reports on interim and final requirements contained in the above compliance schedule, if any, shall be postmarked no later than 14 days following each schedule date.**

Section C - Other Requirements

1. The herein-described treatment works, structures, electrical and mechanical equipment shall be adequately protected from physical damage by the maximum expected one hundred (100) year flood level and operability be maintained during the twenty-five (25) year flood level.

2. The entire sewage treatment facility shall be adequately protected by fencing.

3. The proper operation and maintenance of the listed sewage treatment facility shall be performed, or supervised, by a certified operator possessing at least a Class IV certificate for Waste Water Treatment Plant Operators as issued by the State of West Virginia. The on-site attendance of this facility's Class IV operator shall be determined and directed by the Bureau for Public Health, Office of Environmental Health Services.

4. The permittee has requested five(5) day Biochemical Oxygen Demand and Total Suspended Solids regulation in the form of seven(7) day average limitations in lieu of maximum daily limitations. Seven (7) day average is defined as the arithmetic mean of pollutant parameter values for samples collected in a period of seven (7) consecutive days. The Director has determined that regulation in that form is appropriate for the permitted facility, and has incorporated applicable seven (7) day average limitations and self-monitoring requirements in Section A.001 of this permit. The seven (7) day average shall be calculated as the arithmetic mean of the sample values recorded during the four (4) seven (7)-day periods of the month (i.e. 1st to 7th, 8th to 14th, 15th to 21st, and 22nd to 28th). Additionally, when representatives of the Director are performing compliance assessment activities that are independent of effluent data provided by the permittee, the representatives may perform such assessment based upon maximum daily limitations of 60.0 milligrams per liter for both parameters.

5. The permittee shall submit each month according to the enclosed format, a Discharge Monitoring Report (DMR) indicating in terms of concentration and/or quantities the values of the constituents listed in Section A analytically determined to be in the plant effluent(s). Additional information pertaining to effluent monitoring and reporting can be found in Section III of Appendix A.

6. The required DMRs should be received no later than 20 days following the end of the reporting period and be addressed to:

Director Division of Water and Waste Management 414 Summers Street, 2nd Floor Charleston, West Virginia 25301 Attention: Permitting Section	U. S. Environmental Protection Agency Region III, Water Protection Division NPDES Branch (3WP31) 1650 Arch Street Philadelphia, PA 19103

7. For any noncompliance reports required to be submitted in writing by Appendix A, Part IV, of this Permit, a copy shall also be forwarded to the Environmental Protection Agency at the location specified in Section C.6. above.

8. The permittee shall be required to test the wastewater treatment plant influent, in order to calculate the percent(%) removal parameters for five(5) day Biochemical Oxygen Demand (BOD5) and Total Suspended Solids (TSS), as prescribed in Section A.001 of this Permit. Influent sampling requirements shall include the following:

   a. Percent removal shall be defined as a percent expression of the removal efficiency across the wastewater treatment plant for a given pollutant parameter, as determined from the thirty day average values of the influent concentrations. Only concurrent influent and effluent samples will be used for reporting.

   b. Wet weather shall be defined for this requirement as a day in which the total measured volume of flow for that day exceeds the average daily design flow of the treatment facility, as presented in Section C.9.

   c. Influent BOD5 and TSS samples shall be collected at least eight times per month (8/month) for the wastewater treatment facility. The permittee shall attempt to collect a dry weather sample and a wet weather sample on a weekly basis and shall attempt to collect at least four(4) wet weather influent samples per month and four(4) dry weather influent samples per month. However, the Director recognizes that meteorological conditions during any specific week or any specific month may prevent the collection of dry weather or wet weather samples at the recommended frequencies.

   d. Influent BOD5 and TSS sampling shall be collected using the sample type, as required in Section A.001 of this permit, for effluent BOD5 and TSS samples.

   e. Influent BOD5 and TSS sampling shall be performed over the same time period as effluent BOD5 and TSS sampling.

Section C - Other Requirements

9. a. The average daily design flow of the Publicly Owned Treatment Works has been established at 8.0 million gallons per day. When the average monthly effluent flow reported on Discharge Monitoring Reports reaches, or exceeds, 90 percent of the average design flow, (7.2 million gallons per day) during three (3) consecutive monthly periods, the permittee shall submit a Plan of Action to the Director. The Plan of Action shall present, at a minimum, an analysis of current hydraulic and organic loadings on the plant, an analysis of the future projected loadings, and a Schedule of Tasks to accomplish procedures necessary to maintain required treatment levels.

   b. If the permittee experiences flows greater than 90% of average design flow during three consecutive months, and can demonstrate that such flows resulted from the maximization of wet weather flow through the POTW, in accordance with the Combined Sewer System Overflow requirements of this Permit, then submission of the following information will satisfy the above requirement for the submission of a Plan of Action:

      i. During the period, compliance with applicable BOD5, TSS, and Fecal Coliform effluent limitations was maintained.

      ii. Dry weather flows experienced over the period are less than 90% of average design flow.

      The permittee is compliant with the Combined Sewer System Overflow requirements of the permit, and that continued operation in accordance with those requirements is intended to ensure the maintenance of required treatment levels.

10. Any future collection system extensions projected to cause an increase in the wastewater flow, equal to, or greater than, 400,000 gallons per day (five (5) percent of average design flow) shall require the permittee to contact the Director to secure approval of the extension. After consideration of the complexity of the project, and the available treatment capacity of the facility, the Director may require the permittee to seek approval through Modification of the Permit.

11. Over the term of this permit, the permittee is allowed up to 13 excursions of the maximum daily fecal coliform effluent limitation prescribed in Section A.001. The number of allowed excursions is based upon one (1) percent of the number of required self-monitoring events. Utilization of the excursion allowance is conditioned as follows.

    a. Excursion allowances are afforded only to self-monitoring results and only when self-monitoring activities assess compliance with the maximum daily effluent limitation by analysis of an individual grab sample. No excursion allowance can be applied to analytical results obtained by representatives of the Director in the performance of their compliance assessment activities. Additionally, representatives of the Director may assess compliance with the maximum daily effluent limitation by collection and analysis of an individual grab sample.

    b. No more than one excursion may be utilized in any calendar month.

    c. The excursion allowance is contingent upon the permittee's prompt return to compliance as evidenced by the next required fecal coliform self-monitoring event.

    d. The result for which an excursion allowance is claimed shall be included in the calculation of the average monthly effluent value.

    e. Should an excursion allowance be utilized by the permittee, said allowance must be reported as an attachment to the Discharge Monitoring Report. This attachment should state that (1) an excursion allowance was taken in accordance with the conditions outlined above, (2) the total number of allowances taken to date during the term of this permit, and (3) the total number of allowances remaining during the term of this permit. The permittee shall maintain an on-site record of the excursion allowances utilized during the term of the permit.

12. The analytical test procedures, set forth in 40 CFR Part 136, prescribe colorimetric methods for certain parameters. The digestion process for the performance of total recoverable is not sufficient for the utilization of a colorimetric procedure. Therefore, colorimetric procedures shall not be acceptable for the analysis of parameters prescribed as total recoverable.

    Effluent monitoring for the Arsenic, Cadmium, Chromium, Copper, Cyanide, Lead, Mercury, Nickel, Silver and Zinc parameters shall be conducted using the most sensitive methods and detection levels commercially available and economically feasible. The following methods and detection levels are offered as a guide:

Section C - Other Requirements

12.

Parameter	EPA Method No.	Recommended Detection Level (ug/l)
Arsenic, Total	206.2	2
Cadmium, Total Recoverable	213.2	0.2
Chromium, Hexavalent	218.4	1
Copper, Total Recoverable	220.2	1
Lead, Total Recoverable	239.2	1
Mercury, Total	245.1	0.2
Nickel, Total Recoverable	249.2	3
Silver, Total Recoverable	272.2	0.2
Zinc, Total Recoverable	289.2	1
Cyanide, Free	Use the Standard Method for Weak Acid Dissociable Cyanide, as specified in the latest edition of Standard Methods.	

13. The Division has begun to analyze the impacts of nutrients upon water quality and to explore whether there is a need to establish nutrient water quality standards. Therefore, the Division shall impose effluent monitoring for Total Phosphorus and Total Nitrogen in order to assist the Division in this analysis. Currently, there is no EPA approved method to directly test for Total Nitrogen. The value reported for Total Nitrogen should be the sum of the following:

Total Kjeldahl Nitrogen (TKN)
Nitrite (NO2)
Nitrate (NO3)

Each of these pollutants listed above has an EPA approved method.

14. The permittee shall perform chronic whole effluent toxicity testing in accordance with the following:

a. The chronic toxicity testing shall be performed on an annual (1/year) basis.

b. The tests shall be a seven(7) day Pimephales Promelas, fathead minnow, larval survival and growth test, and a three(3) brood Ceriodaphnia survival and reproduction test.

c. The monitoring required, herein, shall be conducted in accordance with the sample collection, preservation, and analytical procedures specified in 40 CFR Part 136.

d. A 24 hour composite samples of the effluent shall be utilized for testing.

e. Tests results shall be reported on the attached Discharge Monitoring Reports and copies of all test results provided as an attachment, thereto.

1. In addition to the data reporting requirements of 40 CFR Part 136, the exact age of the test organisms at the initiation of the test shall be reported. Values of less than, or equal to, 24 hours are acceptable for Pimephales Promelas, fathead minnow. The age of the Ceriodaphnia must be reported as a range in hours. Values reported as less than 24 hours and from an eight(8) hour window are not acceptable.

2. The chronic toxicity units, TUc, required to be reported, are calculated by dividing 100 by the no observed effect concentration. The permittee shall utilize the no observed effect concentration data results for growth, for the Pimephales Promelas, fathead minnow, and for reproduction for the Ceriodaphnia, when calculating the chronic toxicity units to be reported.

f. If whole effluent toxicity testing shows chronic toxicity of more than 1.0 TUc, the permittee shall immediately resample and test the effluent. This shall be performed within 30 days of the initial demonstration of chronic toxicity of more than 1.0 TUc. Copies of the retesting results shall be provided to the Director immediately upon completion of the test.

g. If the second test shows chronic toxicity of 1.0 TUc or less, whole effluent toxicity testing shall continue in accordance with the requirements, as prescribed herein. However, if the second test shows noncompliance [exceeds 1.0 TUc], the Director shall impose further requirements, as may be necessary, in order to comply with the whole effluent toxicity limitations.

h. The Director shall impose further requirements should the whole effluent toxicity testing results demonstrate an irregular pattern of test results which show chronic toxicity of more than 1.0 TUc.

Section C - Other Requirements

14. i. The permittee will be afforded an opportunity to request limiting the testing to the more sensitive test species, if such a sensitivity determination can be made. However, consideration shall only be given to such request after two(2) consecutive tests have demonstrated compliance with the whole effluent toxicity discharge limitations. If the permittee desires consideration, it must request such by filing a Permit Modification Application.

15. The permittee may accept domestic septage for subsequent treatment and disposal. Approval is subject to, and contingent upon, compliance with the following terms and conditions:

    a. The septage hauler(s), from which the permittee accepts domestic septage, shall be registered to operate under the General Permit for septage handling and disposal.

    b. Records shall be maintained which present the date(s), time(s), name(s) of the hauler(s), and volume(s) accepted.

    c. The permittee shall report monthly on the enclosed Sewage Sludge Management Report the amount of domestic septage accepted.

    d. The permittee shall assure that the acceptance, and processing, of the domestic septage does not result in effluent discharge limitation violations, or receiving stream degradation, or adversely impact sludge disposal. Approval of the permittee's acceptance of the domestic septage in no way relieves the permittee of its obligation to comply with all terms and conditions of its WV/NPDES Permit, and shall not constitute an affirmative defense in any enforcement action brought against the permittee.

16. The permittee shall continue to implement a program to identify and eliminate sources of infiltration and inflow. A written progress report shall be provided on an annual basis, as an attachment to the Discharge Monitoring Report, detailing what has been performed in relation to the implementation of the infiltration and inflow elimination program. Failure of the permittee to comply with this requirement shall result in subsequent administrative and/or legal action, as may be necessary, in order to obtain the compliance sought herein.

17. a. The permittee has developed and is currently implementing a storm water pollution prevention plan (SWPPP) for the wastewater treatment facility site. A written progress report shall be provided on an annual basis, as an attachment to the Discharge Monitoring Report, detailing what has been performed in relation to the implementation of the SWPPP and practices to reduce the pollutants in storm water discharges. A copy of the plan shall be retained at the site for review upon request.

    b. Outlet Numbers 006, 007 and 008, listed below, are for the discharge of untreated stormwater from the Beckley Sanitary Board Wastewater Treatment Plant site directly into the receiving stream. These outlets are described as follows:

Outlet No.	Name	Location	Receiving Stream
006	Near the entrance of the Wastewater Treatment Plant	37 46' 16" N 81 09' 16" W	Piney Creek of the New River of the Kanawha River.
007	Front parking area at plant	37 46' 19" N 81 09' 13" W	Piney Creek of the New River of the Kanawha River.
008	Rear parking area at plant	37 46' 24" N 81 09' 19" W	Piney Creek of the New River of the Kanawha River.

    c. Monitoring for Outlets 006, 007, and 008 shall be in accordance with the following requirements:

        i. Sampling: The collection of the samples for the reported analyses shall be in accordance with Appendix A, Part III of this permit. Any specific requirements contained in the applicable analytical methods must be followed for sample containers, sample preservation, holding times, the collection of duplicate samples, etc.

        ii. A grab sample shall be collected during the first 30 minutes, or as soon thereafter as practicable, of the discharge and analyzed.

        iii. Grab samples are defined as an individual sample of at least 100 milliliters collected during the first 30 minutes, or as soon thereafter as practicable, of the discharge.

Section C - Other Requirements

17. iv. Sample Type: Samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where once per six (6) month sampling is required, the samples for each six-month period shall be collected at least three (3) months apart, if possible. The grab sample shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impractical, a sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impractical.

d. If there is evidence indicating potential or realized impacts on water quality due to any stormwater discharge associated with the wastewater treatment facility covered by this permit, the permit may be promptly modified and/or reissued to include effluent limitations and/or other requirements to control such storm water discharges.

e. Monitoring benchmark concentrations for the discharge of pollutants from the stormwater outlet nos. 006, 007 and 008 are as follows:

f.

Pollutant	Monitoring Cut-Off Concentration	Sampling Frequency	Sample Type
Biological Oxygen Demand	30.0 mg/l	1/6 Months	Grab
Chemical Oxygen Demand	120.0 mg/l	1/6 Months	Grab
Total Suspended Solids	100.0 mg/l	1/6 Months	Grab
Ammonia Nitrogen	4.0 mg/l	1/6 Months	Grab
Fecal Coliform	400 counts/100ml	1/6 Months	Grab
pH	6.0 - 9.0 SU	1/6 Months	Grab
Oil & Grease	15.0 mg/l	1/6 Months	Grab

g. When the average concentration of a pollutant calculated from all monitoring data, minimum of four(4) consecutive samples, is less than the corresponding bench mark value for the pollutant, additional monitoring for the pollutant is not required (all pH values of the samples must be within the range 6.0 to 9.0 S.U.). The permittee shall submit, twice per year, to the Division of Water & Waste Management in lieu of the monitoring data, a certification (form will be provided upon request) that there has not been a significant change in the industrial activity or the pollution prevention measures in the area of the facility that drains to the outlets for which sampling is to be waived. If the average concentration of a pollutant exceeds the corresponding benchmark concentration or pH values of all samples are not within the range of 6.0 to 9.0 S.U., monitoring shall continue and storm water pollution prevention measures shall be revised and the revised plan implemented.

18. Unless otherwise authorized under Section A of this permit, any discharge from any point other than a permitted treatment outfall or permitted combined sewer system is expressly prohibited. In the event there is a prohibited discharge from a sewer conveyance system, the permittee shall follow the reporting requirements contained in Appendix A, Part IV, Section 2.

19. Because the permittee is using ultraviolet light as their disinfection method, no Total Residual Chlorine (TRC) effluent limitation shall currently be imposed. Should the permittee in the future decide to use chlorine as a disinfection method, a TRC effluent limitation shall be promulgated and imposed.

20. Compliance shall be attained in accordance with Civil Action No. 01-C-465-K, and any Amendments, thereto.

Section D - Sewage Sludge Management Requirements

1. The permittee shall monitor and report monthly on the enclosed Sewage Sludge Management Report form the quality and quantity of sewage sludge produced. The required report shall be received no later than 20 days following the end of the reporting period and be addressed to:

   Director
   Division of Water and Waste Management
   414 Summers Street, Second Floor
   Charleston, West Virginia 25301
   Attention: Permitting Section

2. The permittee shall provide copies of monthly reports to the county or regional solid waste authority in which the facility or land application site(s) is located.

3. The Sewage Sludge Monitoring Report form shall be submitted quarterly. The required report shall be received no later than 20 days following the end of the reporting period and shall be addressed to:

   Director
   Division of Water and Waste Management
   414 Summers Street, Second Floor
   Charleston, West Virginia 25301
   Attention: Permitting Section

4. The following method(s) of sludge disposal shall be used for sewage sludge generated and/or processed at the permitted facility:

   a. Land Application: Sewage sludge shall not be applied in a manner or in an amount that would cause the land application site(s) to exceed the annual or lifetime loading rates as listed below. The following site(s) may be used for land application:

Land Application Site(s)	Maximum Annual Loading Rate(s) Tons/Acre	Five (5) Year Cumulative Loading Rate(s) Tons/Acre	Lifetime Loading Rate(s) Tons/Acre
Warren Hylton			
Field 1	4.2	16.9	127
Field 2	4.2	16.9	127
Field 3	4.2	16.9	127
Field 4	4.2	16.9	127
Field 5	4.2	16.9	127
Field 6	4.2	16.9	125

   b. Landfill Disposal: Sewage sludge may also be disposed at a landfill by placing the sewage sludge in the landfill cell, provided that the landfill obtains approval from the Division of Water and Waste Management to allow the acceptance of sewage sludge from the permittee, and provided that the landfill(s) is/are identified in the permit application. Prior approval by the Division of Water and Waste Management is required to change landfill disposal site(s).

5. Sewage sludge shall not be applied to land that has any of the following siting restrictions and/or location standards:

   a. Land that is frozen, snow-covered, or known to be flooded on a regular basis unless the applicant can demonstrate to the Secretary that the land application will not cause runoff into streams or wetlands.

   b. Land that is within 50 feet of surface water including any streams, springs, ponds, wetlands, or other collection points for surface water.

   c. Land that is within 200 feet of drinking water supply wells or other personal water supply.

   d. Land that is within 200 feet of an occupied dwelling.

   e. Land that is within 50 feet of a federal or state highway.

   f. Land that is within 100 feet of an adjacent property owner's property line.

   g. Land that drains into a sinkhole.

Section D - Sewage Sludge Management Requirements

5. h. Land that has been tested and determined to have a pH of less than 6.2 SUs, unless the pH is adjusted to 6.2 SUs or greater.

   i. Land that has a slope greater than 15 percent.

   j. Land that has a seasonal high groundwater table less than two (2) feet from the surface.

   k. Land that has less than 6 inches of soil over bedrock or an impervious pan.

   l. Land that contains soil with surface permeability of less than 0.6 inches/hour or greater than 6 inches/hour.

   m. Land that, if sewage sludge was applied, is likely to adversely affect a threatened or endangered species listed under Section 4 of the Endangered Species Act or its designated critical habitat.

   n. Other land determined by the Secretary to be unsuitable for application of sewage sludge.

6. The following requirements concerning crops grown on land used for application of sewage sludge, the time requirements between application of sewage sludge and the harvesting of crops, and the restrictions on animal grazing and public access shall be met:

   a. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.

   b. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for four (4) months or longer prior to incorporation into the soil.

   c. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than four (4) months prior to incorporation into the soil.

   d. Food crops (human consumption), feed crops (animal consumption), and fiber crops shall not be harvested for 30 days after application of sewage sludge.

   e. Animals shall not be allowed to graze on the land for 30 days after application of sewage sludge.

   f. Turf grown on land where sewage sludge is applied shall not be harvested for one (1) year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the permitting authority.

   g. Public access to land with a high potential for public exposure shall be restricted for one year after application of sewage sludge.

   h. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge.

7. Sewage sludge shall not be stored at a land application site for a period longer than one week, except, storage can be allowed for a period not to exceed three months when provisions, approved by the Director of the Division of Water and Waste Management of the Department, are made to prevent leachate runoff to the surface water and/or groundwater.

8. Sewage sludge shall only be land applied during the hours of daylight.

9. Sewage sludge which is land applied shall not contain excessive amounts of other solid waste materials, as defined in Title 33, Series 2, Section 2.34 of the Legislative Rules.

10. Areas used for processing, curing, and/or storage of sewage sludge shall be designed, constructed and operated to prevent release of contaminants to the groundwater and/or surface water.

11. The land application site(s) shall maintain the soil pH at a minimum of 6.2 SUs for at least five (5) years from the date of application. The soil pH and soil nutrients shall be monitored once per year by obtaining a composite sample of each field utilized for land application during the previous year. The composite samples shall be made up of a minimum of four (4) aliquots taken at locations equally spaced through the land application site(s). The samples may be analyzed through the WVU Extension Service or by other certified laboratories.

Section D - Sewage Sludge Management Requirements

12. All analyses performed on soils and sewage sludges shall be analyzed in accordance with analytical methods listed in 40 CFR Part 503.8 except that Nutrients may be analyzed in accordance with the most recently approved edition of Standard Methods and pH may be analyzed using EPA Method 9045A. Additionally, Fecal Coliform samples shall be prepared for analysis by using the method described in EPA 625R-92/013, Appendix F.

13. Sewage sludge disposed in a landfill cell shall be a non-hazardous material as defined in 40 CFR Part 261.24 and a minimum of 20 percent solids. If the sewage sludge is not 20 percent solids, a bulking agent may be used to achieve 20 percent solids before the sewage sludge is weighed in at the landfill. Alternative sludge disposal methods at the landfill can be utilized upon obtaining prior written approval from the Director of the Division of Water and Waste Management.

14. If sewage sludge is used for revegetation, or spread in any other manner at the landfill, the sewage sludge shall meet all of the land application requirements. These requirements include vector attraction and pathogen reduction methods, heavy metals limits, and abiding by an approved loading rate based on soil analyses.

15. The following primary method for pathogen reduction shall apply to the sewage sludge or sewage sludge products:

    a. Anaerobic Digestion - The sewage sludge mean cell residence time and temperature shall be for minimum of 15 days and within a temperature range of 35 to 55 degrees Celsius OR a minimum of 60 days at a minimum temperature of 20 degrees Celsius. The permittee shall maintain logs documenting the mean cell residence time of the sewage sludge in the digester and the digester temperature, either by continuous measurements or two manual measurements per day, at least one per shift.

    b. If compliance cannot be achieved using the primary method for pathogen reduction, then the permittee must obtain approval from the Director prior to use of a secondary method. The permittee shall not dispose of sewage sludge until approval of a secondary pathogen reduction method is granted.

16. The following primary method for vector attraction reduction shall apply to the sewage sludge or sewage sludge products:

    a. 38 Percent Reduction in Percent Volatile Solids - Sewage sludge is treated by an anaerobic or aerobic digestion (or dried) to achieve volatile solids reduction. The permittee shall monitor and record the volatile solids concentration (mg/kg) of raw and final sludge streams and evaluated weekly.

    b. If compliance cannot be achieved using the primary method for vector attraction reduction, then the permittee must obtain approval from the Director prior to using a secondary method. The permittee shall not dispose of sewage sludge until approval of a secondary vector attraction reduction method is granted.

17. The permittee shall maintain all records and reports of all monitoring required by Section D of this permit for five (5) years after the date of monitoring or reporting. Records should include all sample results, including pathogen and vector attraction reduction monitoring; any landfill receipts; land application records, including site maps, the landowner agreement, soil sample results, daily and cumulative sludge loading rate information; copies of all required reports; and records of all data used to complete these reports.

Section D - Sewage Sludge Management Requirements

18. The appropriate composite sampling procedures shall be based upon the particular sludge processing methods used by the permittee. The composite sampling procedures for the various methods are described as follows:

    Belt Press or Vacuum Filter - During the week that the composite sample is obtained, the permittee shall take a minimum of three (3) grab samples during each day of the week that the dewatering system is in operation. These grab samples are to be mixed together and the final sample obtained from the composite. Samples should be collected at a point immediately after the dewatering operation.

    Liquid Sludge - During the week that the composite sample is obtained, the permittee shall take a representative grab sample from each truck load of sewage sludge hauled during that week. These grab samples are to be mixed together and the final sample obtained from the composite. Samples should be collected from the sewage sludge being pumped into the truck or as the sewage sludge is being discharged from the truck.

    Sewage Sludge Drying Beds - During the week that the composite sample is obtained, the permittee shall take a minimum of four (4) grab samples from each bed finished during that week. These grab samples are to be mixed together and the final sample obtained from the composite.

    Composting or Stock Piles - The permittee shall obtain a minimum of eight (8) grab samples from the pile of finished product. These grab samples are to be mixed together and the final sample obtained from the composite.

19. Written notification shall be given to the Director within five (5) days of the determination of any excursion(s) of the maximum allowable limitations for sewage sludge listed in Section A.S01 of this Permit. A written plan to identify and correct the excursion(s) must be submitted to the Director within sixty (60) days.

20. No single instantaneous grab sample of the final sewage sludge product shall exceed the values found below as listed in Table 2 of the West Virginia Sewage Sludge Management Regulations (Title 33, Series 2).

Metal	Concentration (mg/kg)
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500

21. Sewage sludge shall not be land applied in a manner or in an amount that will cause the land application site(s) to exceed the maximum soil concentrations for the following heavy metals:

Parameter	Maximum Allowable Limitations For Soils (mg/kg)
Arsenic	13.0
Cadmium	2.4
Chromium	290.0
Copper	92.0
Lead	85.0
Mercury	2.4
Molybdenum	4.6
Nickel	83.0*
Selenium	10.0
Zinc	290.0**

* For sandy to silt loam soils with a permeability greater than 2.0 inches per hour, the maximum allowable soil concentration for nickel is 50.0 mg/kg.

** For those sites with greater than 30% legume species, the maximum allowable soil concentration for zinc is 130.0 mg/kg for sandy to silt loam soils with permeability greater than 2.0 inches per hour and 200.0 mg/kg for other soil types.

Section D - Sewage Sludge Management Requirements

22. All land application site(s) shall have new soil analyses performed for the metals listed in Section D.21 of this Permit when the cumulative loading reaches 50% of the assigned lifetime loading rate.

23. Should any landowner of a sludge land application site fail to comply with the terms and conditions pertaining to the landowner under an applicable landowner agreement, the permittee shall immediately contact said landowner and identify the violation causing the noncompliance with the said agreement. The permittee shall take all reasonable, escalating enforcement steps, up to and including disallowing further land application of sludge on the owner's site, in order to keep the landowner compliant with the terms and conditions of said land owner agreement. Also, the permittee shall immediately inform the Agency of any current noncompliance by the owner of a land application site by attaching a written summary of these violations, the cause of each violation, and the steps taken to prevent their recurrence with the submitted Sludge Monitoring Reports. Should the permittee take all of the enforcement steps outlined above, these actions may be used as a mitigating factor to any enforcement actions taken upon the permittee for the noncompliance by the land application site owners to the terms and conditions of Section D herein. However, the burden of proof in relation to the use of this mitigating factor shall lie exclusively upon the permittee. This condition shall not be used as a mitigating factor to any noncompliance associated with any other sections of this permit, even if said noncompliance is, in whole or in part, caused by the land application site owner.

Section E - Combined Sewer System Overflows

1. Outlet Number C002, listed below, serves as a combined sewer relief point. Combined Sewer Overflow (CSOs) are allowed only when flows in combined sewers exceed conveyance or treatment capacities during wet weather periods. Wet weather shall be defined for this requirement as any period of time in which flows within the wastewater collection system, or a portion thereof, are being substantially influenced by rainfall, snow melt, and/or other natural phenomena. CSOs are point source discharges which must provide technology - based control measures in accordance with the Clean Water Act. Additional control measures may also have to be provided if determined necessary to comply with water quality standards. At a minimum, technology - based control measures must include best management practices or other noncapital intensive measures to minimize discharges and water quality impacts.

Outlet Number	Name and/or Location	Receiving Stream
C002	Whitestick Lift Station	Little Whitestick Creek
	Latitude 37° 23' 03"N	of Cranberry Creek of
	Longitude 81° 05' 07"W	the Piney Creek

2. TECHNOLOGY BASED EFFLUENT LIMITATION REQUIREMENTS FOR CSOs

The permittee shall comply with the following technology-based nine minimum CSO control requirements:

a. Conduct Proper Operations and Regular Maintenance Programs

The permittee shall implement proper operation and maintenance plan for the Combined Sewer System (CSS). The permittee shall update the plan from time to time to incorporate any changes to the system and shall operate and maintain the system according to the plan. The permittee shall keep records to document the implementation of the plan.

Designation of a Manager for Combined Sewer System

The permittee shall designate a person to be responsible for the wastewater collection system and serve as the contact person regarding the CSS.

Inspection and Maintenance of CSS

The permittee shall inspect and maintain all CSO structures, regulators, pumping stations, and outlet inflow prevention devices to ensure that they are in good working condition and adjusted to minimize CSOs and prevent stream inflow. The permittee shall inspect, or cause to be inspected, each CSO outfall at an appropriate frequency to ensure no dry weather overflows are occurring. The inspection shall include, but is not limited to, entering the regulator structure if accessible, determining the extent of debris and grit buildup, and removing any debris that may constrict flow, cause blockage, or result in a dry weather overflow. The permittee shall record in a maintenance logbook the results of the inspections. For CSO outfalls that are inaccessible, the permittee may perform a visual check of the overflow pipe to determine whether or not the CSO is occurring during dry weather conditions.

b. Maximize Use of the Collection System for Storage

The permittee shall maximize the in-line storage capacity. The permittee shall keep records to document implementation. The permittee shall:

1) Maintain all dams or diversion structures at their current heights or greater.

2) Minimize discharges from the CSO outfall location.

c. Review and Modify Pretreatment Program

Section E - Combined Sewer System Overflows

2. c. If and when the permittee accepts non-domestic discharges from an industrial user, at that time, the permittee shall implement selected CSO controls to minimize the impact of non-domestic discharges on CSOs. The permittee shall reevaluate at an appropriate frequency, whether additional modifications to its pretreatment program are feasible or of practical value. The permittee shall keep records to document this evaluation and implementation of the selected CSO controls to minimize CSO impacts resulting from non-domestic discharges

The permittee shall require significant industrial users (SIUs) discharging to the CSS, where practicable, to minimize batch discharges during wet weather.

d. Maximize Flow to POTW Treatment Plant

The permittee shall maximize flows to the Publicly Owned Treatment Works (POTW) treatment plant during all wet weather flow conditions/ events consistent with permit requirements and deliver all flows to the treatment plant within the constraints of the capacity of the treatment plant and/or collection system. The permittee shall keep records to document these actions.

e. Prohibit Combined Sewer Overflows During Dry Weather

Dry weather overflows from CSO outfalls are prohibited. All dry weather overflows must be reported to the permitting authority immediately upon the permittee becoming aware of the dry weather overflow in accordance with the provisions of Appendix A, Part II, Section 3. When the permittee detects a dry weather overflow, the permittee shall begin corrective action immediately. The permittee shall inspect the dry weather overflow each subsequent day until the overflow has been eliminated. The permittee shall record in the inspection logbook dry weather overflows, as well as the cause, corrective measures taken, and the dates of beginning and cessation of the overflow.

f. Control Solid and Floatable Materials in CSOs

The permittee shall implement measures to control solid and floatable materials in its CSOs.

g. Develop and Implement Pollution Prevention Program

The permittee implement a pollution prevention program focused on reducing the impact of CSOs on receiving waters. The permittee shall keep records to document pollution prevention implementation activities. This program shall include street sweeping and catch basin modification or cleaning at an appropriate frequency to prevent large accumulations of pollutants and debris.

h. Notify the Public of CSOs

The permittee shall continue to implement a public notification process to inform citizens of when and where CSOs occur. The process must include:

1) The permittee shall keep records documenting public notification.

2) A mechanism to alert persons using all receiving water bodies affected by CSOs.

3) Define a CSO discharge event that would initiate the public notification process and provide an explanation as to how said definition was determined. The definition would include an estimated volume and duration of the CSO discharge event that could be potentially harmful to users of the receiving body of water.

4) The permittee shall install and maintain identification signs at all CSO outfalls owned and operated by the permittee. The permittee must place the signs at or near the CSO outfalls and ensure that the signs are easily readable by the public.

5) A CSO logbook documenting CSO events shall be placed at bill paying locations.

6) CSO pamphlets shall be available for distribution to the public.

Section E - Combined Sewer System Overflows

2. i. Monitoring to Effectively Characterize CSO Impacts and the Efficacy of CSO Controls

The permittee shall regularly monitor CSO outfalls to effectively characterize CSO impacts and the efficacy of CSO controls.

3. WATER QUALITY-BASED EFFLUENT LIMITATION REQUIREMENTS

a. The permittee shall submit revisions to the Long-Term Control Plan [LTCP] approved on April 02, 2001, and any amendments to it, by December 15, 2005.

b. Upon approval of the revisions to the LTCP, the permittee shall implement the projects and activities as approved in the revised LTCP, and shall comply with the following performance measures:

i. Any combined sewage captured shall receive a minimum of the following treatment:

A. Solids and floatables disposal.

B. Disinfection.

C. Dechlorination.

4. LONG-TERM CONTROL PLAN

The Beckley Sanitary Board [BSB], as part of its LTCP, will maintain the following controls and complete the following projects as part of its ongoing CSO monitoring program.

a. Maintain the nine minimum controls as detailed in its LTCP and continually assess their effectiveness.

b. Maintain its CSO operation, maintenance, and monitoring program to record all CSO activities in an effort to develop a historical database to assess future events.

c. Maintain a sampling/testing readiness program to collect test samples to determine the impact of future events as warranted.

5. MONITORING REQUIREMENTS

a. i. The permittee shall monitor for Fecal Coliform from Outlet No. C002 beginning on September 1, 2004 and ending August 31, 2005. The permittee shall sample each discharge event practicable during this time period.

ii. An individual grab sample shall be obtained at a time that is representative of the CSO discharge.

iii. Sampling and analyses required herein shall be conducted in accordance with sample collection, preservation, and analytical procedures specified in 40 CFR 136.

iv. The permittee shall summarize and submit the Fecal Coliform data report to this Division by September 30, 2005.

b. With the development and approval of the revised LTCP, the following monitoring requirements shall be implemented to assist the agency in determining the effectiveness of the technology-based effluent limitation requirements:

i. The permittee shall monitor C002 for the duration and estimate volume of all overflow events.

ii. The flow monitoring data shall be submitted to this agency as a portion of the semi-annual progress reports.

iii. The permittee shall sample the C002 for the pollutants BOD5, TSS, Ammonia Nitrogen, and pH at the beginning of the monitoring process to establish a baseline of information. During the fifth year of the permit period and prior to the submission of the WV/NPDES permit renewal application, the permittee shall again sample the C002 for the same parameters. The permittee shall submit the baseline sampling results and the fifth year sampling results as an attachment to the permit renewal application.

Section E - Combined Sewer System Overflows

6. CSO PROGRESS REPORTS

The permittee shall submit semi-annual (1/6 Months) progress reports detailing actions taken to meet the above CSO requirements. The required reports should be received no later than 20 days or postmarked no later than 15 days following the end of the reporting period. The reports should be addressed to:

Director Division of Water & Waste Management 414 Summers Street, 2nd Floor Charleston, WV 25311-1088 Attention: Permitting Section	and	Assistant Director Division of Water & Waste Management 1560 Kanawha Boulevard Charleston, WV 25301-1251 Attention: Engineering Section

7. SPECIAL CONDITIONS

a. This permit may be modified or revoked and reissued to include new or revised conditions if new information, not available at the time of permit or permit modification issuance, indicates that CSO controls imposed under the permit have failed to ensure the attainment of State water quality standards.

b. This permit may be modified or revoked and reissued to include new or revised conditions based on new information resulting from implementation of the Long-Term Control Plan.

Section F - Approved Pretreatment Programs

1. The permittee shall implement the Industrial Pretreatment Program in accordance with the Clean Water Act and the regulations, 40 CFR Part 403, promulgated, thereunder. The program shall also be implemented in accordance with the program submission, approved on the 24th day of May 2002.
2. The permittee shall implement the program upon all industrial users of the Publicly Owned Treatment Works (POTW), irrespective of the geographical location of the users. The permittee shall secure and maintain adequate legal authority to control users located within the wastewater collection and treatment service area.
3. The permittee shall submit proposed changes to the approved program in accordance with 40 CFR Part 403.18, and shall obtain prior approval of Substantial Modifications as defined by 40 CFR Part 403.18(c).
4. The permittee's implementation of the program shall, at a minimum, meet the requirements listed below.
   a. The permittee shall issue individual discharge permits to all significant industrial users (SIUs) as defined by 40 CFR Part 403.3(t). Permits shall contain the minimum requirements of 40 CFR Part 403.8(f)(1)(iii). The permittee shall reissue permits to SIUs prior to their expiration. Administrative extensions of expiring permits shall not be granted without written consent from the Director.
   b. The permittee shall inspect each SIU at least once per year. The annual inspection shall evaluate the manufacturing process, chemical storage areas, pretreatment facilities, spill prevention and control procedures, slug discharge control procedures, hazardous waste generation and disposal procedures, self-monitoring procedures and records.
   c. The permittee shall sample and analyze the nondomestic wastewater discharge(s) of each SIU at least once per year. Such monitoring shall include all parameters limited in the SIU's permit and shall be performed in accordance with 40 CFR Part 136.
   d. The permittee shall perform quarterly assessments of SIU compliance, and document the name of SIUs that demonstrate significant noncompliance (SNC) and the SNC criteria violated. The permittee shall publish the name of any SIU that demonstrates significant noncompliance in the pretreatment year, as required by 40 CFR Part 403.8(f)(2)(vii). Publication shall occur on or before the 15th day of August of each year.
   e. The permittee shall take timely and appropriate enforcement for all instances of industrial user noncompliance in accordance with an Enforcement Response Plan as required by 40 CFR Part 403.8(f)(5). The permittee shall take formal enforcement actions against SIUs demonstrating Significant Noncompliance as defined by 40 CFR Part 403.8(f)(2)(vii). A formal enforcement action shall consist of an administrative order or a more stringent action.
   f. The permittee shall ensure that adequate resources (equipment and personnel) are available to fully implement the pretreatment program.
5. The permittee shall conduct monitoring at its treatment plant, as follows:
   a. The POTW influent shall be monitored on a quarterly basis for arsenic, mercury, cadmium, chromium (total), copper, lead, nickel, silver, zinc, and cyanide (total). For all parameters, except cyanide, 24 hour composite samples shall be obtained. An individual grab sample shall be obtained for cyanide. Influent monitoring shall be performed concurrent with effluent monitoring required in Section F.5.b. of the pretreatment requirements.
   b. The POTW effluent shall be monitored quarterly for arsenic, mercury, cadmium, chromium (total), copper, lead, nickel, silver, zinc, and cyanide (total). For all parameters, except for cyanide, 24 hour composite samples shall be obtained. An individual grab sample shall be obtained for cyanide. Effluent monitoring shall be performed concurrent with influent monitoring required in Section F.5.a. of the pretreatment requirements.
   c. The permittee shall conduct annual (1/year) monitoring of the POTW influent for all priority pollutants not specified in Section A. For volatile organics, a minimum of four(4) individual samples shall be obtained. The samples may be analyzed separately or may be combined in the laboratory, using flask or purge device compositing techniques as specified in EPA's draft guidance, VOA Compositing Procedures. Twenty-four hour composite samples shall be obtained and analyzed for base neutrals, acid extractables, pesticides and metals.
   d. The POTW sludge shall be monitored, as specified, in Section A. and Section D.
6. On or before the 31st day of August of each year, the permittee shall submit an annual report that prescribes the permittee's pretreatment implementation activities of the previous pretreatment implementation year (July 1 through June 30). The annual report shall include the following information:

Section F - Approved Pretreatment Programs

6. a. SIU Listing - Provide an updated list of all current SIUs. The list shall indicate which SIUs are subject to Categorical Pretreatment Standards, and the applicable standard.

   b. SIU Permits - Provide a list of the issuance and expiration dates of each SIU permit, and the names of SIUs that are without a valid permit.

   c. Sampling and Inspection - Provide the number of inspections and sampling events performed by the permittee at SIUs and a listing of SIUs that were not sampled and those that were not inspected.

   d. Compliance and Enforcement - Provide a summary of the violations of pretreatment standards and requirements that occurred during the year. Include the results of the quarterly SNC assessments required by Section F.4.d) above, and for each SIU that demonstrated SNC, describe the specific enforcement action taken and the current compliance status of the SIU. Also provide the numbers of each type of enforcement action taken by the permittee, and a copy of the published list of SIUs in SNC, as required by Section F.4.d) above.

   e. POTW Operations - Provide a description of any interference, upset or permit violations experienced by the POTW which are attributable to the discharges of industrial users. Include a summary of the results of the influent, effluent and sludge monitoring required by Section F.5 above.

   f. Local Limitations - For each pollutant that a local limitation exists provide a summary of the current total available load for the POTW and the allocation of that load to existing industrial users for the previous year. Include the loads allocated by the addition and/or deletion of industrial users and uncontrollable sources such as but not limited to domestic waste background loads, non-significant industrial users, etc.

7. The Director and the U.S. EPA retain the right to require the permittee to institute changes to the pretreatment program if:

   a. The requirements of 40 CFR Part 403 are not satisfied by program implementation;

   b. Problems such as interference, pass through or sludge contamination develop;

   c. Federal or State requirements change.

The herein-described activity is to be extended, modified, added to, made, enlarged, acquired, constructed or installed, and operated, used and maintained strictly in accordance with the terms and conditions of this permit, with the plans and specifications submitted with Permit Application No. WV0023183; with the plan of maintenance and method of operation thereof submitted with such application(s); and with any applicable rules and regulations promulgated by the Environmental Quality Board and the Secretary of the Department of Environmental Protection.

Failure to comply with the terms and conditions of this permit, with the plans and specifications submitted with Permit Application No. WV0023183; and with the plan of maintenance and method of operation thereof submitted with such application(s) shall constitute grounds for the revocation or suspension of this permit and the invocation of all the enforcement procedures set forth in Chapter 22, Article 11, or 15 of the Code of West Virginia.

This permit is issued in accordance with the provisions of Chapter 22, Article 11 and 12 and/or 15 of the Code of West Virginia and is transferable under the terms of Section 11 of Article 11.

Director

CERTIFICATE OF LIABILITY INSURANCE

ADDITIONAL INSURED: CITY OF BECKLEY
BOX 2514
BECKLEY, WV 25802

CERTIFICATE NO: L 0401 - Jun 29, 1987

This certifies that the insured named above is an Additional Insured for the Coverage indicated below under General Liability Policy GL 4806295 and Automobile Policy CA 5189013 issued to the State of West Virginia by NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH, PA.

COVERAGE PERIOD: Jul 1, 2004 to Jul 1, 2005 12:01 a.m. Eastern Time

COVERAGE AFFORDED:
Comprehensive General Liability Insurance
Personal Injury Liability Insurance
Professional Liability Insurance
Stop Gap Liability Insurance
Wrongful Act Liability Coverage
Comprehensive Auto Liability Coverage
Auto Physical Damage Insurance
Garagekeepers Insurance

LIMIT OF LIABILITY: $1,000,000 each occurence* and is SUBJECT TO $2,500 DEDUCTIBLE. *For all coverages combined. This limit is not increased if a claim is insured under more than one coverage or if claim is made against more than one insured.

SPECIAL LIMITS: The auto physical damage limit is the actual cash value of each vehicle subject to a deductible of $1,000.

CLAIM REPORTING: Claims should be reported to:
Claim Manager
West Virginia Board of Risk & Insurance Management
90 MacCorkle Avenue S.W.Suite 203
South Charleston, West Virginia 25303

Claims Made Prior Acts Date: April 1, 1984

THE INSURANCE EVIDENCED BY THIS CERTIFICATE IS SUBJECT TO ALL OF THE TERMS, CONDITIONS, EXCLUSIONS AND DEFINITIONS IN THE POLICIES. IT IS A CONDITION PRECEDENT OF COVERAGE UNDER THE POLICIES THAT THE ADDITIONAL INSURED DOES NOT WAIVE ANY STATUTORY OR COMMON LAW IMMUNITY CONFERRED UPON IT.

BY: Bob Mills DATED: June 30, 2004
AUTHORIZED REPRESENTATIVE

AGENT OF RECORD: SONGER INSURANCE AGENCY INC.

P.O. DRAWER 1818
BECKLEY, WV 25802

DEPARTMENT OF THE ARMY
HUNTINGTON DISTRICT, CORPS OF ENGINEERS
502 EIGHTH STREET
HUNTINGTON, WEST VIRGINIA 25701-2070

REPLY TO
ATTENTION OF

July 9, 2004

Planning, Programs and Project Management
Planning Branch, Special Studies Section

Kenneth Richmond, General Manager
Beckley Sanitary Board
301 South Heber Street
PO Box 2494
Beckley, WV 25802-2494

On behalf of the U.S. Army Corps of Engineers' Section 340 Program, I am pleased to inform you that your request for funding for the construction work associated with the Piney Creek Interceptor Sewer Replacement project was approved. Your project was deemed appropriate under the established criteria. An award in amount of $1,000,000 was authorized.

This is a reimbursable program and should not be considered a grant program. The Corps of Engineers is authorized to provide assistance for design and construction with cost sharing at 75% Federal and 25% local match.

We congratulate you and look forward to continuing to work together to make West Virginia a better place for us all. Ms. Beth Cade of the Huntington District is the project manager and will be assisting with project implementation. If you need to contact her, she can be reached at (304) 399-5848.

Sincerely,

for William E. Bulen
Colonel, Corps of Engineers
District Engineer

CLOSING MEMORANDUM

To: **Ken Richmond**
Rosalie Brodersen
Carrie Grimm
Barbara Meadows
Samme Gee

From: **Dennis R. Vaughan, Jr.**

Date: **September 28, 2004**

Re: **City of Beckley Sewerage System Revenue Bonds, Series 2004 A**

---

1. DISBURSEMENTS TO CITY

Payor:	West Virginia Department of Environmental Protection
Source:	Series 2004 A Bonds Proceeds
Amount:	$451,950
Date:	September 28, 2004
Form:	Check
Payee:	City of Beckley
Bank:	Bank One, West Virginia, National Association
Account:	Series 2004 A Bonds Construction Trust Fund

VAUGHAN LAW FIRM
Attorneys and Counsellors at Law

DENNIS R. VAUGHAN, JR.

WEST VIRGINIA MUNICIPAL LEAGUE CENTER
2020 KANAWHA BOULEVARD, EAST
CHARLESTON, WEST VIRGINIA 25311

TELEPHONE (304) 342-3900
TELECOPY (304) 344-2386

September 28, 2004

City of Beckley
P.O. Box 2514
Beckley, WV 25802

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: City of Beckley
Sewerage System Revenue Bonds, Series 2004 A

Ladies and Gentlemen:

We have served as bond counsel to the City of Beckley, West Virginia ("the Issuer"), a municipal corporation, in connection with the issuance of its Sewerage System Revenue Bonds, Series 2004 A, dated the date hereof (the "Bonds").

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a loan agreement for the Bonds dated September 16, 2004, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are issued in the principal amount of $9,039,000, in the form of one bond, registered as to principal and interest to the Authority, with interest at the rate of 2% per annum, and with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing September 1, 2006, as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds are subject to the SRF Administrative Fee equal to 1% of the principal amount of the Bonds as set forth in the Schedule Y attached to the Loan Agreement.

The Bonds are issued under the authority of and in full compliance with the Constitution and

statutes of the State of West Virginia, including particularly, Chapter 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and a Bond Ordinance duly passed by the Issuer on July 13, 2004, effective July 27, 2004, as supplemented by a Supplemental Resolution duly adopted by the Issuer on September 14, 2004 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued, and the Loan Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance and in the Loan Agreement when used herein.

In connection with the issuance of the Bonds, the Issuer has executed a Certificate as to Arbitrage, dated as of the date hereof (the "Certificate as to Arbitrage"), which, among other things, sets forth restrictions on the investment and expenditure of the Bond proceeds and earnings thereon, to ensure that the arbitrage requirements of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (collectively, the "Code"), necessary to establish and maintain the excludability of interest on the Bonds from gross income for federal income tax purposes, are and will continue to be met.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to enact the Ordinance and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer, enforceable in accordance with the terms thereof.

3. The Loan Agreement inures to the benefit of the Authority and the DEP and can not be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

4. The Issuer has legally and effectively enacted the Ordinance and adopted all other necessary resolutions in connection with the issuance and sale of the Bonds. The Ordinance constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Sewerage System Refunding Revenue Bonds, Series 1995 A, and Sewerage System Revenue Bonds, Series 1998 A, all in accordance with the terms of the Bonds and the Ordinance.

6. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Bonds (a) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to the Code and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations under the Code. It should be noted, however, that interest on the Bonds is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code that must be satisfied subsequent to issuance of the Bonds for interest thereon to be and continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Bonds set forth in the Bond Legislation and the Certificate as to Arbitrage, and other certificates delivered in connection with the issuance of the Bonds. The Issuer has covenanted to comply with all such requirements. Failure to comply with certain of such Code requirements or such certifications, covenants and representations could cause the interest on the Bonds to be includable in gross income retroactive to the date of issuance of the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Bonds.

7. Under the Act, the Bonds and any interest thereon are exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

No opinion is given herein as to the effect upon enforceability of the Bonds under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or in the exercise of judicial discretion or principles of equity in appropriate cases.

We have examined the executed and authenticated Bond numbered AR-1 and in our opinion, the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

Vaughan Law Firm

Vaughan Law Firm
By: D.R. Vaughan

CITY OF
BECKLEY
P. O. BOX 2514 • BECKLEY, WEST VIRGINIA 25802-2514

WILLIAM H. FILE III
City Attorney

Phone: (304) 256-1750

September 28, 2004

City of Beckley
P.O. Box 2514
Beckley, WV 25802

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Vaughan Law Firm
2020 Kanawha Blvd., E.
Charleston, WV 25311

Re: City of Beckley
Sewerage System Revenue Bonds, Series 2004 A

Ladies and Gentlemen:

I am City Attorney for the City of Beckley in Raleigh County, West Virginia (the "Issuer"). As such City Attorney, I have examined copies of the approving opinion of the Vaughan Law Firm, as bond counsel, relating to the above-captioned bonds of the Issuer (the "Bonds"), a loan agreement for the Bonds, dated September 16, 2004, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), a Bond Ordinance duly passed by the Issuer on July 13, 2004, effective July 27, 2004, as supplemented by a Supplemental Resolution duly adopted by the Issuer on September 14, 2004 (collectively, the "Ordinance"), a Petition of the Sanitary Board duly adopted on April 14, 2004, and other documents relating to the Bonds. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Loan Agreement and the Ordinance when used herein.

I am of the opinion that:

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System and to enact the Ordinance, all under the Act and other applicable provisions of law. The Sanitary Board has been duly created by the Issuer and is presently existing as a sanitary board under the Act.

2. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the DEP and the Authority, constitutes a valid and binding agreement of the Issuer, enforceable in accordance with its terms.

3. The Mayor, Recorder and members of the Council and the Sanitary Board of the Issuer have been duly, lawfully and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.

4. The Ordinance has been duly adopted and enacted by the Issuer and is in full force and effect.

5. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Bonds, the Loan Agreement and the Ordinance, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach or default under any ordinance, resolution, order, agreement, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.

6. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges, including, without limitation, all requisite orders, consents, certificates and approvals from the DEP, the West Virginia Infrastructure and Jobs Development Council and the Public Service Commission of West Virginia (the "PSC"), and the Issuer has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges.

7. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, the Bonds and the Ordinance, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds, the collection of the Gross Revenues or the pledge of the Net Revenues for the payment of the Bonds.

8. All successful bidders have made the required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon my review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, I am of the opinion that such surety bonds and policies: (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interest of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Ordinance and the Loan Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

William H. File, III

WILLIAM H. FILE, III
CITY ATTORNEY

JACKSON KELLY
ATTORNEYS AT LAW PLLC
1600 LAIDLEY TOWER • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
www.jacksonkelly.com

September 28, 2004

City of Beckley
P.O. Box 2514
Beckley, WV 25802

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Vaughan Law Firm
2020 Kanawha Boulevard, East
Charleston, WV 25311-2204

Re: City of Beckley Sewerage System Revenue Bonds, Series 2004 A

Ladies and Gentlemen:

We are special counsel to the City of Beckley (the "Issuer") in connection with certain matters before the Public Service Commission of West Virginia ("the PSC"). As such special counsel, we are of the opinion that the Issuer has received the PSC Orders entered on May 14, 2004, and September 24, 2004, in Case No. 03-1770-S-CN, granting to the Issuer a certificate of public convenience and necessity for the construction of certain wastewater facilities as more particularly described therein (the "Project") and approving the financing for the Project. The time for appeal of the PSC Order entered May 14, 2004, has expired prior to the date hereof. The time for appeal of the PSC Order entered September 24, 2004, has not expired on the date hereof. However, the only party to Case No. 03-1770-S-CN is the Issuer, no public protest or request for intervention having been sought by any other party. The Issuer has certified that it will not appeal such Orders. The PSC Staff has previously indicated its support for the Orders, and has no authority does not intend to appeal such Orders in any event. Both Orders remain in full force and effect as of the date of this letter.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

Jackson Kelly PLLC

C0884455.1

CITY OF
BECKLEY
P. O. BOX 2514 • BECKLEY, WEST VIRGINIA 25802-2514

WILLIAM H. FILE III
City Attorney

Phone: (304) 256-1750

September 28, 2004

City of Beckley
P. O. Box 2514
Beckley, West Virginia 25802

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, West Virginia 25311

West Virginia Water Development Authority
180 Association Drive
Charleston, West Virginia 25311

Vaughan Law Firm
2020 Kanawha Boulevard, East
Charleston, WV 25311-2204

Re: Final Title Opinion for the City of Beckley

Ladies and Gentlemen:

I am City Attorney for the City of Beckley (the "Issuer") in connection with a proposed project to construct certain extensions, additions, betterments and improvements to the existing sewerage system of the Issuer as further defined in that certain bond ordinance (the "Ordinance") passed by the Issuer on July 13, 2004, effective July 27, 2004, and supplemented by supplemental Resolution adopted September 14, 2004 (the "Supplemental Resolution (collectively the "Ordinance) herein the project (the "Project"). I provide this final title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Department of Environmental Protection (the "DEP") for the Project. Please be advised of the following:

1. I am of the opinion that the Issuer is a duly created and validly existing municipality possessed with all the powers and authority granted to municipalities under the laws of the State of West Virginia to construct, operate and maintain the Project as approved by the DEP.

2. The Issuer has obtained all necessary permits and approvals for the construction of the Project.

3. I have investigated and ascertained the location of, and I am familiar with the legal description of, the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Chapman Technical Group, the consulting engineer for the Project.

4. I have examined the records on file in the Office of the Clerk of the County Commission of Raleigh County, West Virginia, the county in which the Project is to be located, and, in my opinion, the Issuer has acquired legal title or such other estate or interest, or will acquire by condemnation such estate or interest, in all of the necessary site components for the Project, including all easements and/or rights of way, sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the Project.

5. All deeds, easements and rights of way which have been acquired to date by the Issuer have been duly recorded in the Office of the Clerk of the County Commission of Raleigh County to protect the legal title to and interest of the Issuer.

Very truly yours,

William H. File, III

WILLIAM H. FILE, III
CITY ATTORNEY

VAUGHAN LAW FIRM
Attorneys and Counsellors at Law

DENNIS R. VAUGHAN, JR.

WEST VIRGINIA MUNICIPAL LEAGUE CENTER
2020 KANAWHA BOULEVARD, EAST
CHARLESTON, WEST VIRGINIA 25311

TELEPHONE (304) 342-3900
TELECOPY (304) 344-2386

September 28, 2004

City of Beckley
P. O. Drawer 2514
Beckley, West Virginia 25802

Bank One, West Virginia, National Association
500 Neville Street
Beckley, West Virginia 25801

Re: City of Beckley
Sewerage System Revenue Bonds, Series 2004 A

Gentlemen:

We have acted as special counsel to Bank One, West Virginia, National Association in its capacity as depository bank (herein "Depository Bank") under the Bond Ordinance and the Supplemental Resolution (collectively the "Ordinance") adopted, in connection with the issuance of the above-captioned bonds (the "Bonds"). The Bonds are being issued pursuant to an Ordinance passed on July 13, 2004, effective on July 27, 2004, as supplemented by a Supplemental Resolution of the City on September 14, 2004. Capitalized terms used herein, unless otherwise defined, shall have the meaning set forth in the Ordinance.

In that connection, we have examined originals or copies, certified or otherwise identified to our satisfaction of (i) the Ordinance, (ii) the Articles of Association and By-laws of the Bank, and (iii) such other documents and matters of law as we have deemed necessary in connection with the following opinions.

Based upon the foregoing, we are of the opinion that:

1. The Depository Bank is a national banking association with trust powers, duly organized and validly existing under the laws of the United States of America and authorized to do business in the State of West Virginia.

2. The acceptance by the Depository Bank of the duties and obligations under the Ordinance and compliance with the provisions thereof will not conflict with or constitute a

breach of or default under any law, administrative regulation, consent decree or any agreement or other instrument to which the Bank is subject.

3. The individuals authorized to act upon behalf of the Depository Bank have been property authorized to do so by authorities of the Depository Bank and are set forth in the Depository Bank Certificate of even date herewith.

4. This opinion is furnished solely for the benefit of the above listed addressees and may not be relied on by any other person without our prior written consent.

5. In rendering this opinion, we express no opinion as to the applications of the laws of any other state regarding the documents referred to in this opinion, other than the State of West Virginia.

Very truly yours

VAUGHAN LAW FIRM

Vaughan Law Firm
By: D.R. Vaughan