$11,000,000
THE CITY OF BECKLEY, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BONDS
SERIES 1998 A

CLOSING DOCUMENT LIST

1. Certified copy of Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended
2. Certified copy of the Charter of The City of Beckley
3. Sanitary Board Petition
4. Certified copy of Ordinance enacted by City Council on November 25, 1997
5. Affidavit of Publication of Abstract of Ordinance and Notice of Public Hearing
6. Minutes of City Council Meeting of November 11, 1997
7. Minutes of City Council Meeting of November 25, 1997
8. Minutes of Public Hearing held on December 9, 1997
9. Certified copy of Supplemental Resolution adopted February 24, 1998
10. Minutes of City Council Meeting of February 24, 1998
11. Loan Agreement dated January 29, 1998
12. Municipal Bond Commission New Issue Form
13. Rate Ordinance adopted September 23, 1997
14. Cross-Receipt for Bonds and Bond Proceeds
15. PSC Certificate of Convenience and Necessity
16. NPDES Permit
17. General Certificate
18. Direction to Authenticate and Deliver Bonds

19. IRS Form 8038-G

20. Non Arbitrage Certificate

21. Engineer's Certificate

22. Registrar's Agreement

23. Certificate of Registration

24. Registrar's Certificate

25. Opinion of Vaughan & Withrow, Bond Counsel, regarding the validity of the Bonds

26. Opinion of Mark Matkovich, City Attorney

27. Opinion of Smith, Cochran & Hicks regarding debt service coverage and parity bonds

28. Specimen Bond

29. Letter from Infrastructure Council approving the Project

# State of West Virginia

# Certificate

*I, Ken Hechler, 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 AS INDICATED BY THE RECORDS OF THIS OFFICE.**

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

**Eighteenth** *day of*

**March** *19* **98**

*Ken Hechler*

*Secretary of State*

sanitary district, said county court shall enter an appropriate order as hereinbefore provided, and such additional territory shall thenceforth be deemed an integral part of such sanitary district. (1933, Ex. Sess., c. 24, § 13.)

**Editor's notes.** — As to the designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

## § 16-12-14. Disconnection of territory from sanitary district.

Any contiguous territory located within the boundaries of any sanitary district organized under this article, and upon the border of such sanitary district, may become disconnected from such sanitary district in the manner following, to wit: Ten percent or more of the legal voters resident in the territory sought to be disconnected from such sanitary district may petition the county court [county commission] of the county in which the original petition for the organization of said sanitary district was filed, to cause the question of such disconnection to be submitted to the legal voters of such territory whether such territory shall be disconnected. Said petition shall be addressed to the county court of the county in which the original petition for the formation of such sanitary district was filed and shall contain a definite description of the boundaries of such territory to be disconnected and recite as a fact, that there is no bonded indebtedness of such sanitary district incurred while such territory to be disconnected was a part of such sanitary district and that such territory to be disconnected is not, at the time of the filing of such petition, and will not be, either benefited or served by any work or improvement either then existing or then authorized by said sanitary district. Upon filing such petition in the office of the county clerk of the county in which the original petition for the formation of such sanitary district has been filed it shall be the duty of the county court of the county in which the original petition for the formation of such sanitary district was filed, to consider the boundaries of such territory and the facts upon which the petition is founded, and shall consider the limits and boundaries of such proposed territory, in the same manner as provided for locating, fixing and deciding of the limits and boundaries of the original sanitary district, as provided in section one [§ 16-12-1] of this article. If any part of the territory proposed to be disconnected is situated in another county or counties other than that county in which the original petition was filed, then it shall be the duty of the said county court of the county in which the original petition was filed to call to its assistance the county courts of counties in which portions of such territory proposed to be disconnected is situated; such county courts shall constitute themselves a board of commissioners, and after electing a presiding officer from among themselves, shall consider the boundaries of such territory and the facts upon which the petition is founded, and shall consider the limits and boundaries of such proposed territory to be disconnected, in the same manner as provided for locating, fixing and deciding of the limits and boundaries of the original sanitary district, as provided in section one of this article: Provided, however, That it shall be the duty of the county





court or the board of commissioners to deny the prayer of the petition for the disconnecting of any territory from the original sanitary district, if the material allegations therein contained are not founded in fact.

Notice shall be given by the county court of the time and place, when and where all persons interested will be heard substantially as provided in section one [§ 16-12-1] of this article. The conduct of the hearing and the manner of conducting the subsequent election on the question whether such territory shall become disconnected and the issuance, reception, return and canvassing of the ballots shall be, as nearly as possible, in accordance with the provisions of section one of this article. The ballots for the election provided for in this section shall be substantially as follows, to wit:

☐ For disconnection from sanitary district.

☐ Against disconnection from sanitary district.

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.** — As to the designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

# ARTICLE 13.

# SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.


Sec.
16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.
16-13-2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.
16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.
16-13-4. Payment of preliminary expenses of surveys, etc.
16-13-5. Ordinance necessary before acquisition or construction of works.
16-13-6. Publication and hearing upon ordinance.
16-13-7. Acquisition by condemnation or purchase.
16-13-8. Cost of works.
16-13-9. Contracts and obligations incurred to be paid for solely by revenue bonds.
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.
16-13-11. Additional bonds to extend or improve works.
16-13-12. Additional bonds for extension, etc., of works to have equal priority with original bonds.
16-13-13. Application of revenue from bonds; lien.
16-13-14. Securing bonds by trust indenture.
16-13-15. Sinking fund; transfer of balance of net revenues.
16-13-16. Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.
16-13-17. Municipality subject to established rates.
16-13-18. Supervision of works by sanitary

Sec.
board; organization of board; qualifications, terms and compensation of members.
16-13-18a. Publication of financial statement.
16-13-19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers.
16-13-20. Discharge of lien on property acquired.
16-13-21. Action on certificates or attached coupons; receivers.
16-13-22. Powers conferred in addition to existing powers; jurisdiction outside corporate limits.
16-13-22a. Grants, loans and advances.
16-13-22b. Contracts for abatement of pollution.
16-13-22c. Refunding bonds.
16-13-22d. Subordination of bonds.
16-13-22e. Operating contract.
16-13-22f. Exemption of bonds from taxation.
16-13-22g. Covenants with bondholders.
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.
16-13-23a. Additional powers of municipality upon receipt of order to cease pollution.
16-13-24. Article to be construed liberally.

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**Editor's notes.** — Acts 1989, 1st Ex. Sess., c. 3, redesignated the board of health and the department of health as the division of health, within the department of health and human resources. See also, Acts 1997, c. 225.

**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. 1957), 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. 1957), 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. 1957), 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).





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

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, 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 waterworks and sewerage system pursuant to section one-b [§ 8-20-1b], article twenty, chapter eight of this code, and shall have authority 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; and any such municipality may serve and supply the facilities of such sewerage system within the corporate limits of such municipality and within the area extending twenty miles beyond the corporate limits of such municipality: Provided, That such municipality shall not serve or supply the facilities of such sewerage system within the corporate limits of any other municipality without the consent of the governing body thereof. No obligations shall be incurred by any such municipality and/or sanitary district in such construction or acquisition except such as is payable solely from the funds provided under the authority of this article. (1933, Ex. Sess., c. 25, § 1; 1955, c. 132; 1986, c. 118.)

**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.

The construction, acquisition, improvement, equipment, custody, operation and maintenance of any such works for the collection, treatment or disposal of sewage 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. The term "works" as used in this article shall be construed to mean and include a works for the collection and/or treatment, purification and

disposal of sewage, in its entirety or any integral part thereof. The t "municipality" as used in this article shall be construed to mean any municip... corporation, incorporated city, town, village or sanitary district in the State of West Virginia. The term "governing body" as used in this article shall be construed to mean the mayor and council or other legally constituted governing body of any municipality. The term "board" when hereinafter used in this article shall be construed to mean the sanitary board as set up in section eighteen of this article. (1933, Ex. Sess., c. 25, § 2.)

**Quoted** in State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960). 149 F. Supp. 866 (S.D.W. Va. 1957); Delardas v. Morgantown Water Comm'n, 148 W. Va. 776, 137 S.E.2d 426 (1964).
**Cited** in United States v. City of Charleston.

## § 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 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 five 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 require-





ments and enter into direct purchase agreements o ntracts 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. (1933, Ex. Sess., c. 25, § 3; 1989, c. 133.)

**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 Virginia 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. 1957), 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. 1957), 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. 1957), 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. 1957).

**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. 1957), 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. 1957), 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 the works, 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 such payment, and said bonds shall not, in any respect, be a corporate indebtedness of such municipality, within the meaning of any statutory or constitutional limitations thereon. All the details of such bonds shall be determined by ordinance or ordinances of the municipality. (1933, Ex. Sess., c. 25, § 9; 1949, c. 93.)

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

**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. 1957), 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 trust 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. 1957).

## § 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 determine. (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 or charges for the use of and the service rendered by such 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 may change and readjust such rates or charges from time to time. Such rates 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 deemed the revenues of the works. No such rates 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 or charges. After introduction of the ordinance fixing such rates or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates 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. After such hearing, which may be adjourned from time to time, the ordinance establishing rates 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 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 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 or charges may be made in the same manner as such rates 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 shall be required. The aggregate of the rates or charges shall always be sufficient for such expense of operation, repair and maintenance and for such sinking fund payments. All such rates or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate or charge so established shall not be 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, however, 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 or charges for services or facilities furnished shall remain unpaid for a period of thirty days after 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. The board collecting such 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 charges for both water facilities and sewer facilities, including reasonable

interest and penalty charges, have been paid in full. (1933, Ex. Sess., [illegible]5, § 16; 1933, 2nd Ex. Sess., c. 48; 1959, c. 125; 1967, c. 105.)

**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, — U.S. —, 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. Municipality subject to established rates.

The municipality shall be subject to the same charges and rates established as hereinbefore provided, or to charges and rates established in harmony therewith, for service rendered the municipality, and shall pay such rates or charges when due from corporate funds and the same shall be deemed to be a part of the revenues of the works as herein defined, and be applied as herein provided for the application of such revenues. (1933, Ex. Sess., c. 25, § 17.)

**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 sewage 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 construc[illegible]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 public office. Said appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each such 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. Such 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 such 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.)

**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. 1957).

## § 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.** — The phrase "justice of the peace" and the word "justice," when used in a context meaning "justice of the peace," are construed to mean "magistrate." See § 50-1-17 and W. Va. Const., art. VIII, § 15.





## § 16-13-19. Contract with other municipaliti[illegible]or 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 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 such contracts with such 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, however, That no such 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 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 and charges for the service rendered in the municipality where the works are owned and operated, and such rates or charges shall be collectible and shall be a lien as herein provided for rates 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 such contract shall, if so provided in said ordinance or trust indenture, be deemed 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 such revenues. (1933, Ex. Sess., c. 25, § 19; 1981, 1st Ex. Sess., c. 2.)

**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 ten miles outside the corporate limits thereof. (1933, Ex. Sess., c. 25, § 22.)

## § 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. 1957).

## § 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 sewerage system, and all the moneys, revenues and other income of such municipality derived from such sewerage system shall be exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof. (1955, c. 132.)

## § 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 said 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 said sewerage system, may be applied and the securing, use and disposition thereof, including, if deemed 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, 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 deemed 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, 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, the payment of the principal of and interest on all bonds or other obligations payable from the revenues of such sewerage 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 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;

(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenue of such sewerage system, and the rank or priority, as to lien and source and security for payment from the revenues of such sewerage system, between bonds payable from such 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 such 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 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 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 deemed necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that such other covenants are not expressly enumerated hereunder, it being the intention hereof to grant to such 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.)

## § 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 or charges for the use of the services and facilities of the existing sewer 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 that in any way uses or is served thereby, and may change and readjust such rates or charges from time to time. Such rates 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, and the repair, alteration and extension of existing sewer 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; and 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 said construction, to be remitted to and administered by the municipal bond commission by expending and paying said costs and expenses of construction and operation in the manner as provided by said ordinance; and after the completion of the construction such rates 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. No such rates 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 such rates or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates or charges, shall be given by publication of such notice 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 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 or charges, either as originally introduced or as modified and amended, may be passed and put into effect. A copy of the schedule of such rates 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 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 or charges may be made in the same manner as such rates 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 is required. If any rate 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 such 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 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 such article provides for or requires the issuance of revenue bonds or the imposition of rates and charges in connection with such bonds: Provided, however, 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 such municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article. (1955, c. 135; 1967, c. 105; 1994, c. 61.)

**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.
16-13A-10. Budget.
16-13A-11. Accounts; audit.
16-13A-12. Disbursement of district funds.
16-13A-13. Revenue bonds.
16-13A-14. Items included in cost of properties.
16-13A-15. Bonds may be secured by trust indenture.
16-13A-16. Sinking fund for revenue bonds.
16-13A-17. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.
16-13A-18. Operating contracts.
16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.
16-13A-19. Statutory mortgage lien created; foreclosure thereof.
16-13A-20. Refunding revenue bonds.
16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.
16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.
16-13A-23. Validation of acts and proceedings of public service boards.
16-13A-24. Acceptance of loans, grants or temporary advances.
16-13A-25. Borrowing and bond issuance; procedure.





**Editor's notes.** — Acts 1989, 1st Ex. Sess., c. 3, redesignated the board of health and the department of health as the division of health, within the department of health and human resources. See also, Acts 1997, c. 225.

**Textbooks.** — Instructions for Virginia and West Virginia, Publisher's Editorial Staff (Michie).

**Constitutionality.** — The act from which this article was derived, authorizing the creation of public service districts by the county courts of this State, defining the powers and duties of the governing boards of such districts in the acquisition, construction, maintenance, operation, improvement and extension of property supplying water and sewerage services, and authorizing the issuance of bonds of such districts payable solely from revenue to be derived from the operation of such properties, does not violate any provision of the Constitution of this State or the Fourteenth Amendment to the Constitution of the United States. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Purpose.** — The purpose of this article is to provide water and sewerage facilities in unincorporated districts. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

The title to Acts 1953, c. 147, is sufficient to give a fair and reasonable index to all of the purposes of the act. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Public utilities.** — Public service districts are "public utilities" because they are required to pay a special license fee pursuant to § 24-3-6 for support of the public service commission. 50 Op. Att'y Gen. 447 (1963).

**Cited** in Berkeley County Pub. Serv. Dist. v. Vitro Corp. of Am., 152 W. Va. 252, 162 S.E.2d 189 (1968); State v. Neary, 179 W. Va. 115, 365 S.E.2d 395 (1987); McClung Invs., Inc. v. Green Valley Community Pub. Serv. Dist., 485 S.E.2d 434 (W. Va. 1997).

## § 16-13A-1. Legislative findings.

The Legislature of the state of West Virginia hereby determines and finds that the present system of public service districts within the state has provided a valuable service at a reasonable cost to persons who would otherwise have been unable to obtain public utility services. To further this effort, and to ensure that all areas of the state are benefiting from the availability of public service district utility services and to further correct areas with health hazards, the Legislature concludes that it is in the best interest of the public to implement better management of public service district resources by expanding the ability and the authority of the public service commission to assist public service districts by offering advice and assistance in operational, financial and regulatory affairs.

In addition to the expanded powers which shall be given to the public service commission, the Legislature also concludes that it is in the best interest of the public for each county commission to review current technology available and consider consolidating existing public service districts where it is feasible and will not result in the interference with existing bond instruments. Further, if such consolidation is not feasible, the Legislature finds that it is in the best

# 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 ir 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]

RESOLUTION OF THE SANITARY BOARD OF THE CITY OF BECKLEY REQUESTING THE COMMON COUNCIL OF THE CITY OF BECKLEY TO APPROVE THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, IMPROVEMENTS, AND BETTERMENTS TO THE CITY'S WASTEWATER COLLECTION AND TREATMENT SYSTEM AND TO ISSUE SEWER SYSTEM REVENUE BONDS IN THE AMOUNT NOT TO EXCEED $11,000,000

WHEREAS, the City of Beckley owns a wastewater collection and treatment system, which system is under the operation and control of the Sanitary Board; and

WHEREAS, it has been determined that certain additions, improvements, and betterments to the system are necessary and desirable, which additions, improvements, and betterments to the system generally consist of upgrading the existing Wastewater Treatment Plant, upgrading the Whitestick Pump Station, replacing the existing Pinecrest Interceptor line and other various upgrades and repairs; and

WHEREAS, the Sanitary Board has determined that the costs of such additions, improvements, and betterments are approximately $9,000,000; and

WHEREAS, the Sanitary Board has determined that the costs for the additions, improvements, and betterments to the system should be paid for from the issuance of bonds payable from the revenues of the system.

NOW, THEREFORE, BE IT RESOLVED BY THE SANITARY BOARD OF THE CITY OF BECKLEY:

1. That the Common Council of the City of Beckley is requested to approve the acquisition and construction of the additions, improvements, and betterments to the City's wastewater collection and treatment system described above.

2. That the Common Council is requested to issue sewer revenue bonds in an amount not exceeding $11,000,000 in order to finance certain costs of making the additions, improvements, and betterments to the system, together with other costs of the project, including, without limitation, engineering, accounting, legal, and other costs associated with the acquisition and construction of the project.

3. That the Common Council take such other action as may be required in order to issue the bonds for the benefit of the City and the users of the system.

This Resolution is duly adopted by the Sanitary Board of the of the City of Beckley this 10th day of September, 1997 on a motion by THOMAS KEYSER and seconded by JOHN SADOWSKI.

Emmett S. Pugh III
Chairman
Sanitary Board of the City
of Beckley

Member

Member

I certify that the foregoing is a true and accurate copy of the Resolution duly adopted by the Sanitary Board of the City of Beckley at its regular meeting on September 10, 1997. This Resolution is valid and in effect as of March 18, 1997.

Gary Sutphin - Secretary
City of Beckley Sanitary Board

Date:

3-18-97

# CITY OF BECKLEY

## SEWER SYSTEM REVENUE BONDS

## SERIES 1997 A

## BOND ORDINANCE

# CITY OF BECKLEY

# BOND ORDINANCE

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# 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

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.

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 sale 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 997 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

or 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

Investment 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:

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|---|---|
| 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

date specified in a supplemental resolution and shall bear interest from the date so specified therein.

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

urrender 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 deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, tolen 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

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, 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

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EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

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(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 1/6$^{th}$ 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 of 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 1/12$^{th}$ 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 1/3$^{rd}$ 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 1/3$^{rd}$ of the amount of principal which will mature and become due on said Series 1997

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 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 1995 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 interest 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 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 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 ıch 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

(i) 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

onds 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 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 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 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 Accountants, based upon the necessary investigation and certification by the Consulting ıgineers, 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

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 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 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 described 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

ertificate," 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 d 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

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 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 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

...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 ...l 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

earlier time, shall be sufficient, to pay as and when due either at maturity or at the next demption 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

MONTHLY STATEMENT
(And Legal Advertising Invoice)

# BECKLEY NEWSPAPERS, INC.

5609

DRAWER P OR R
BECKLEY, W. VA. 25801

THE CITY OF BECKLEY
DRAWER AJ
BECKLEY, WV 25802-2832

TERMS — STRICTLY CASH BY 10th OF FOLLOWING MONTH. NO DISCOUNT ALLOWED ON LEGAL ADVERTISING.

| DATE | DAILY SPACE | DESCRIPTION | DEBITS | CREDITS | BALANCE | SPACE BALANCE TO DATE | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | CURRENT MONTH'S DOLLARS | WORDS RALEIGH REGISTER | TRACTS | MISC. |
| | | BALANCE BROUGHT FORWARD | | | | | | | |
| 25/97 | 5½"x 2 | @63 words per inch | | | | | 693 | | |
| 02/97 | | @.0825 per word | 57.17 | | | | | | |
| | | 75% for 2nd insert | 42.88 | | | | | | |
| | | | | | 100.05 | | | | |
| | | Sanitary Board/change in rates | | | | | | | |

THIS STATEMENT COVERS LEGAL ADVERTISING ONLY

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS INC.

### BECKLEY, WEST VIRGINIA 25801

October 2, 19 97

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to-wit:

I, Jack L. Scott, being first duly sworn upon my oath, do depose and say that I am Director of Advertising 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 II), commencing with the issue of the 25th day of September, 1997, and ending with the issue of the 2nd day of October, 1997, (and was posted at the _____ on the _____ day of _____); that said annexed notice was published on the following dates: September 25 & October 2, 1997 and that the cost of publishing said annexed notice as aforesaid was $ 106.05.

Signed Jack L. Scott
Jack L. Scott
Director of Advertising
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this 2nd day of October 19 97.

My commission expires March 27 2001

Diana L. Slone
Notary Public of Raleigh County, West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. SLONE
BECKLEY NEWSPAPER
P.O. DRAWER P OR E

R/H

## COPY OF PUBLICATION

PUBLIC NOTICE OF CHANGE
IN RATES BY
MUNICIPALITIES

NOTICE is hereby given that the Sanitary Board of the City of Beckley, a public utility, adopted, by ordinance on September 23, 1997, a tariff containing increased rates, tolls, and charges for furnishing sanitary sewer service to 7,615 customers at Beckley, Mabscott, and Raleigh, West Virginia in the County of Raleigh.

The proposed increased rates and charges will become effective November 7, 1997 unless otherwise ordered by the Public Service Commission and will produce approximately $900,590.00 annually in additional revenue, an increase of 49.5%. The average monthly bill for various classes of customers will be changed as follows:

Residential: Increase $7.03, Increase 49.5%.
Commercial: Increase $31.02, Increase 49.5%.
Industrial: Increase $0, Increase 0%.
Resale: Increase $0, Increase 0%.
Other: Increase $191.36, Increase 49.5%

The increases shown are based on averages of all customers in the indicated class. Individual customers may receive increases that are greater or less than average. Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing. The Commission shall review and approve or modify the increased rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges, by:

(1) Any customer aggrieved by the change in rates or charges who presents to the Commission a petition signed by not less than twenty-five percent of the customers served by such municipality operated public utility; or

(2) Any customer who is served by a municipality operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

All petitions should be addressed to The Executive Secretary, Public Service Commission of West Virginia, 201 Brooks St., P.O. Box 912, Charleston, WV 25323.

A complete copy of the proposed rates, as well as a representative of the Company to provide any information requested concerning it, is available to all customers, prospective customers, or their agents at any of the following office in the Company:

City of Beckley Municipal Building, 409 South Kanawha St., Beckley WV 25801.

Sanitary Board of the City of Beckley, 301 South Heber St., Beckley WV 25801.

A copy of the proposed rates is available for a public inspection at th Office of the Secretary of the Public Service Commission at 201 Brook St., Charleston, WV.

10-2-Thu-2-RH

CHARLESTON NEWSPAPERS
P.O. Box 2993
Charleston, West Virginia 25330
Billing 348-4898
Classified 348-4848
1-800-WVA-NEWS

# LEGAL ADVERTISING INVOICE

| | |
|---|---|
| INVOICE DATE | 10/02/97 |
| ACCOUNT NBR | 019237002 |
| SALES REP ID | 0020 |
| INVOICE NBR | 469134001 |

M

CITY OF BECKLEY
LINDA CARR
DRAWER AJ
BECKLEY WV 25802

LED
TO

Please return this portion with your payment.

AMOUNT PAID: _____

Make checks payable to: Charleston Newspapers

CHARLESTON NEWSPAPERS
P.O. Box 2993
Charleston, West Virginia 25330
Billing 348-4898
Classified 348-4848
1-800-WVA-NEWS
FEIN 55-0676079



| | |
|---|---|
| INVOICE DATE | 10/02/97 |
| ACCOUNT NBR | 019237002 |
| SALES REP ID | 0020 |
| INVOICE NBR | 469134001 |



Legal pricing is based upon 67 words per column inch at a rate of $.0925 per word.
Each successive insertion is discounted by 25% of the first insertion rate ($.069375 per word).

| ISSUE DATE | AD TYPE | PUB | DESCRIPTION / REFERENCE NBR / PURCHASE ORDER # | AD NUMBER | AD SIZE / TOTAL RUN | RATE | GROSS AMOUNT | NET AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 9/24 | LEGF | GZ | CHANGE IN RATES 469134001 | L403850 | 2X0750 15.00 | 6.19 | 92.85 | 92.85 |
| 0/01 | LEGR | GZ | CHANGE IN RATES 469134002 | | 2X0750 15.00 | 6.19 | 92.85 | |
| | | | LEGAL DISCOUNT 25% | | | | 23.21- | 69.64 |
| | | | TOTAL INVOICE AMOUNT | | | | | 162.49 |

RECEIVED OCT 10 1997

State of West Virginia, **AFFIDAVIT OF PUBLICATION**

I, Sandra Legg of

THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER,

published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of:

CHANGE IN RATES

was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County, West Virginia, on the 25TH day of SEPTEMBER 1997. Published during the following dates: 09/24/97-10/01/97

Subscribed and sworn to before me this 3 day of October

Printers fee $ 162.49

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
SARAH L. WITHROW
1001 LINCOLN DRIVE
SO. CHARLESTON, WV 25309
My Commission Expires April 28, 2003

Notary Public of Kanawha County, West Virginia

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS INC.

### BECKLEY, WEST VIRGINIA 25801

September 19, 19 97

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to-wit:

I, Jack L. Scott, being first duly sworn upon my oath, do depose and say that I am Director of Advertising 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, miscelluneous 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 II), commencing with the issue of the 10th day of September, 1997, and ending with the issue of the 17th day of September, 1997 and was posted at the _____ on the _____ day of _____ ); that said annexed notice was published on the following dates: _____

September 10 & 17, 1997 and that the cost of publishing said annexed notice as aforesaid was $ 118.30

Signed Jack L. Scott
Jack L. Scott
Director of Advertising
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this 19th day of September, 19 97.

My commission expires March 27, 2001

Diana L. Slone
Notary Public of Raleigh County, West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. SLONE
BECKLEY NEWSPAPER
P.O. DRAWER P OR R
BECKLEY, WV 25801
My Commission Expires March 27, 2001

R/H

## COPY OF PUBLICATION

PUBLIC HEARING

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 September 23, 1997 in Council Chambers of Beckley City Hall. All interested parties are urged to attend.

AN ORDINANCE TO AMEND AND REENACT SECTION 9-240, 242, 246, 247, AND 248 DIVISION 3 RATES AND CHARGES ARTICLE II SEWERS AND SEWAGE DISPOSAL CHAPTER 9 MUNICIPAL UTILITIES AND SERVICES BY ESTABLISHING A NEW RATE FOR THE TREATMENT OF SEWAGE

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY that the following rate structure is established for the treatment of sewage:

Sec. 9 240. Schedules for Service Inside City.

(a)Monthly Rates. There is established a schedule of just and equitable rates of 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, $4.78 per 1,000 gallons.

2) Next three thousand (3,000) gallons used per month, $4.49 per 1,000 gallons.

3)Next twenty thousand (20,000) gallons used per month, $4.10 per 1,000 gallons.

4) All over twenty five thousand (25,000) gallons used per month, $3.66 per 1,000 gallons. Minimum $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 one thousand (1,000) gallons for each occupant per month, but not less than the minimum monthly rate.

(d) Sewer Connection Charges. 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 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 two (2) user classifications shall be:

1) For residential and commercial service.

2) For service to establishments production 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 waste shall pay charges determined as provided in Section 9-242.

(g) Delinquency Penalty. On all accounts, not paid in full within twenty (20) days of the billing date, the penalty of ten percent (10%) will be added to the net amount shown.

(h) These rates do not apply to the former customers of the Raleigh County Airport Authority who will continue to pay according to their duly authorized tariff.

(i) Sale for Resale. For all services rendered to the North Beckley Public Service District on and after 12:01 a.m. January 23, 1996, a rate of $1.28 per one thousand (1,000) gallons.

Sec 9-242. Industrial User Charge And Fees.

All users heretofore classified by the Sanitary Board as producing industrial wastes, shall pay an Industrial user's Industrial Cost Recovery Charge for the treatment of industrial waste which shall be calculated on the basis of the following formula:

$$C_i = V_o V_i + B_o B_i + S_o S_i$$

$C_i$=charge to industrial users per year.

$V_o$=average unit cost of transport and treatment chargeable to volume, in dollars per gallon.

$V_i$=volume of wastewater from industrial users in gallons per year.

$B_o$=average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars per pound.

$B_i$=weight of BOD from industrial users in pounds per year.

$S_o$=average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound.

$S_i$=weight of total solids from industrial users in pounds per year.

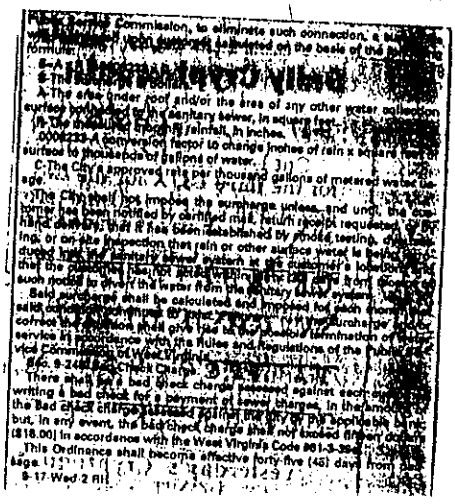
Sec. 9 245. Reconnection Charge.

A $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.

Sec. 9-247. Surcharge Formula to be Applied in cases Where Surface Drainage is Connected to the City's Sanitary Sewer System.

APPLICABILITY

Wherever the City has discovered that a customer's 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 de-



Commission, to eliminate such connection, a ...
... formula:
... A-The area under roof and/or the area of any other water collection ... surface being used to ... sanitary sewer, in square feet.
... B-The annual average rainfall, in inches.
... 0.0062338-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.
... 2)The City shall not impose the surcharge unless, and until, the customer has been notified by certified mail, return receipt requested, or personal delivery, that it has been established by smoke testing, dye testing, or on the 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 taken corrective action within the ... such notice to divert the water from the sanitary sewer system.
... Said surcharge shall be calculated and imposed for each month ... until the customer shall give the City notification of termination of ... correct the condition. Upon receipt of such notification, the City ... service in accordance with the Rules and Regulations of the Public Service Commission of West Virginia.
... Sec. 9-248. Check Charge.
... There shall be a bad check charge assessed against each ... writing a bad check for a payment of sewer charges. In the ... the Bad Check Charge assessed against the City of ... but, in any event, the bad check charge shall not exceed ... ($18.00) in accordance with the West Virginia Code ...
This Ordinance shall become effective forty-five (45) days from ... 9-17-Wed-2 ntl

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| | | | TOTAL INVOICE AMOUNT | | | | | 273.65 |

State of West Virginia,

## AFFIDAVIT OF PUBLICATION

I, Sandra Legg of

THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER, published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of:
ORDINANCE TO AMEND
was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County, West Virginia, on the 11TH day of SEPTEMBER 1997. Published during the following dates: 09/10/97-09/17/97
Subscribed and sworn to before me this 19 day of September
Printers fee $ 273.65

Notary Public

A REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF BECKLEY CONVENED AT 7:30 P.M., TUESDAY, NOVEMBER 11, 1997, IN COUNCIL CHAMBERS OF BECKLEY CITY HALL.

THOSE PRESENT: Mayor Emmett S. Pugh III; Council Members A. K. Minter, Jr., William B. File III, Steve Nickell, Tim Berry, Madrith Chambers, Howard Mollohan, and Robert Rappold; Recorder-Treasurer Gary Sutphin, City Attorney Mark Matkovich.

ALSO PRESENT: Fire Chief Paul Bragg, Police Chief Bill Cole, Director of Housing and Community Development Manuel Carteile, Chief of Code Enforcement Bob Cannon, 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 File and seconded by Councilwoman Chambers.

The Mayor introduced Lisa Dooley from the West Virginia Municipal League who informed Council of the purpose of the League. She mentioned that the City has participated in the Interim Financing Program and the Unemployment Program. By participating in the Interim Financing Program and the Unemployment Program, the City has saved the taxpayers of Beckley over $100,000. Mrs. Dooley also presented Mayor Pugh with the Quiet Strength Award for his work and accomplishments with the League.

Mr. Matkovich presented for first reading a Sewer Bond Ordinance for the acquisition, construction, improvement, and betterment of the Public Sewerage System Facilities of the City of Beckley. On a motion by Councilman Mollohan and seconded by Councilman File, first reading of this Ordinance was unanimously approved by Council.

Mr. Matkovich also presented for Council approval the first reading of an Ordinance restricting persons under 21 from possessing alcoholic beverages and the penalties thereof. On a motion by Councilman File and seconded by Councilman Rappold, the first reading of this proposed Ordinance was unanimously approved by Council.

Mr. Matkovich presented for second reading and public hearing an Ordinance lowering the speed limit on City Avenue to 25 M.P.H. Affidavit of Publication is hereinafter incorporated:

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS INC.

### BECKLEY, WEST VIRGINIA 25801

November 6, 19 97

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to-wit:

I, Jack L. Scott, being first duly sworn upon my oath, do depose and say that I am Director of Advertising 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 Notice of Public Hearing
(Description of notice)

was duly published in said newspaper once a week for one successive weeks (Class 1), commencing with the issue of the 6th day of November, 1997, and ending with the issue of the 6th day of November, 1997, (and was posted at the _____ on the _____ day of _____); that said annexed notice was published on the following dates: November 6, 1997 and that the cost of publishing said annexed notice as aforesaid is $27.20

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 November 11, 1997 in Council Chambers of Beckley City Hall. All interested parties are urged to attend.

AN ORDINANCE TO PROVIDE FOR THE AMENDMENT OF THE TRAFFIC CONTROL MAP OTHER THAN PARKING AND TRAFFIC CONTROL FILE FOR THE ESTABLISHMENT OF A 25 M.P.H. SPEED ZONE ON CITY AVENUE

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY:

WHEREAS, Chapter 13, Motor Vehicles and Traffic, Article III, Traffic Control Maps and File, of the Code of the City of Beckley, West Virginia, provides for the establishment of Traffic Control Map; and

WHEREAS, It is now deemed necessary and proper for the Common Council of the City of Beckley to amend the Traffic Control Map provided for in Section 13-17 of said Article III, and the Traffic Control File provided for in Section 13-18 of said Article III, in the manner and form provided for in Section 13-19 of said Article III.

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

That the Traffic Control Map Other than Parking and Traffic Control File of the City of Beckley be, and the same are hereby amended to provide for the establishment of a 25 M.P.H. speed zone for City Avenue. And further, that the erection of proper signs [illegible]

The public hearing was opened for comments. There being none, either for or against passage of the Ordinance, the public hearing was closed. A motion was made by Councilwoman Chambers and seconded by Councilman Minter to adopt this Ordinance but following further discussion, it was thought this is a State route and, therefore, we cannot change the speed limit. Until it can be determined if this is a State route, Council tabled any action on this Ordinance on a motion by Councilman File and seconded by Councilman Rappold with unanimous Council approval.

Under old business, Councilman Mollohan mentioned the property at Five Corners being cleaned. Mr. Cannon stated that the property owner indicated that they would clean the area; but due to the fact that nothing has been done, a Court order will be issued for this cleanup.

Councilman File asked again about the trash on Franklin Avenue. The Mayor indicated that this has not been looked at as of yet. The Mayor, Mr. Cannon, and Mr. Robinson will look into this matter.

Under new business, Councilman Berry asked about the feasibility of putting a loading zone in front of Kopy Xpress/Ron's area of the City. The Mayor informed Councilman Berry and Council that this has been discussed, but there are other projects that need to be completed before this project is undertaken.

Councilman File asked what items will be picked up in the Fall Pickup. The Mayor stated that the items preferred for pickup at this time are leaves and limbs.

Ms. Jewell Henderson of the Park Avenue Crime Watch Group expressed her concern about Shooters and the lot behind this business being overgrown and full of trash. Mr. Cannon will check into this matter but explained that the owner has been sent a notice to clean up this lot.

Mr. Cam Taylor, a business owner in the downtown area, expressed his concerns about crack dealers in the downtown area. Chief Cole will check into this matter.

Ms. Bambi McQuade stated that she has a problem with a convicted rapist living in her neighborhood. The City Attorney will check into this matter to see what can be done.

Councilwoman Chambers mentioned that City workers have asked about a Christmas bonus.

With no further business to be addressed, the meeting adjourned at 8:08 p.m. on a motion by Councilman Rappold and seconded by Councilman File.

MAYOR

RECORDER-TREASURER

A REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF BECKLEY CONVENED AT 7:30 P.M., TUESDAY, NOVEMBER 25, 1997, IN COUNCIL CHAMBERS OF BECKLEY CITY HALL.

THOSE PRESENT: Mayor Emmett S. Pugh III; Council Members A. K. Minter, Jr., William H. File III, Steve Nickell, Tim Berry, Madrith Chambers, Howard Mollohan, and Robert Rappold; Recorder-Treasurer Gary Surphin, City Attorney Mark Matkovich.

ALSO PRESENT: Fire Chief Paul Bragg, Police Chief Bill Cole, Director of Housing and Community Development Manuel Cartelle, Director of Exhibition Mine Renda Morris, Director of Human Rights Commission Elmer Day, Chief of Code Enforcement Bob Cannon, 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 File and seconded by Councilwoman Chambers.

Mr. Matkovich presented for second reading a Sewer Bond Ordinance for the acquisition, construction, improvement, and betterment of the Public Sewerage System Facilities of the City of Beckley. On a motion by Councilman File and seconded by Councilman Nickell, second reading of this Ordinance was unanimously approved by Council.

The Mayor presented for Council approval a Purchasing Requisition for Ray Lambert Enterprises in the amount of $26.80. Chief Bragg explained to Council that this vendor had the lowest price for the items needed. On a motion by Councilman File and seconded by Councilman Mollohan, this Purchasing Requisition was unanimously approved by Council.

Under old business, the Mayor stated that the Ordinance for lowering the speed limit on City Avenue to 25 M.P.H. was tabled at the last meeting. On a motion by Council Mollohan and seconded by Councilman Nickell, this ordinance was brought off the table for further discussion. It was found that this is a City street, and the speed limit can be lowered by the Common Council. On a motion by Council File and seconded by Councilwoman Chambers, the following Ordinance was approved by Council with Councilman Minter opposed:

FIRST READING
10-28-97

SECOND READING
11-25-97

AN ORDINANCE TO PROVIDE FOR THE AMENDMENT OF THE TRAFFIC CONTROL MAP - OTHER THAN PARKING AND TRAFFIC CONTROL FILE - FOR THE ESTABLISHMENT OF A 25 M.P.H. SPEED ZONE ON CITY AVENUE

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY:

WHEREAS, Chapter 13, Motor Vehicles and Traffic, Article III, Traffic Control Maps and File, of the Code of the City of Beckley, West Virginia, provides for the establishment of Traffic Control Map; and

WHEREAS, it is now deemed necessary and proper for the Common Council of the City of Beckley to amend the Traffic Control Map provided for in Section 13-17 of said Article III, and the Traffic Control File provided for in Section 13-18 of said Article III, in the manner and form provided for in Section 13-19 of said Article III.

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

That the Traffic Control Map - Other than Parking and Traffic Control File of the City of Beckley be, and the same are hereby amended to provide for the establishment of a 25 M.P.H. speed zone for City Avenue. And further, that the erection of proper signs

The Mayor also reported to Council that the ditch lines on Franklin Avenue have been cleaned, and he also reported that the owner of the property at Five Corners has been contacted, and this area should be cleaned up in the near future.

Councilman Minter asked Mr. Matkovich if the City has the authority to lower the speed limit on City streets to 15 M.P.H. Mr. Matkovich will check into this matter to see if this is allowed under the West Virginia State Code.

Under new business, the Mayor stated that since a Holiday Bonus was mentioned at the last Council meeting, it is his recommendation that all full-time City employees be given a $300 Holiday Bonus. On a motion by Councilman Rappold and seconded by Councilman Mollohan, this $300 Holiday Bonus was unanimously approved by Council.

Mr. Cameron Taylor appeared before Council commending the City for their efforts in working with the parking situation in the downtown area as well as the Police Department making needed arrests. He also commended Jill Moorefield on the Harvest Festival and Fashion Show held recently.

Brenda Chapman informed Council of a teleconference to be held December 5, 1997 dealing with the critical components of promising approaches in the treatment of drug-involved juvenile offenders.

With no further business to be addressed, the meeting adjourned at 7:50 p.m. on a motion by Councilman Nickell and seconded by Councilman Rappold.

MAYOR

RECORDER-TREASURER

A REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF BECKLEY CONVENED AT 7:30 P.M., TUESDAY, DECEMBER 9, 1997, IN COUNCIL CHAMBERS OF BECKLEY CITY HALL.

THOSE PRESENT: Mayor Emmett S. Pugh III; Council Members William H. Flie III, Steve Nickell, Tim Berry, Tim Madrith Chambers, Howard Mollohan, and Robert Rappold; Recorder-Treasurer Gary Sutphin, City Attorney Mark Matkovich, and Secretary Linda Carr.

ALSO PRESENT: Fire Chief Paul Bragg, Police Chief Bill Cole, Director of Exhibition Mine Renda Morris, Director of Human Rights Commission Elmer Day, Chief of Code Enforcement Bob Cannon, and General Manager of Sanitary Board Ken Richmond.

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 Flie and seconded by Councilwoman Chambers.

Mr. Matkovich presented for third reading and public hearing a Sewer Bond Ordinance for the acquisition, construction, improvement, and betterment of the Public Sewerage System Facilities of the City of Beckley. Affidavit of Publication is hereinafter incorporated:

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS INC.

### BECKLEY, WEST VIRGINIA 25801

December 2 19 97

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to-wit:

I, Jack L. Scott, being first duly sworn upon my oath, do depose and say that I am Director of Advertising 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 Notice of Public Hearing
(Description of notice)

was duly published in said newspaper once a week for two successive weeks (Class II), commencing with the issue of the 26th day of November, 1997, and ending with the issue of the 2nd day of December, 1997 and was posted at the

on the _____ day of _____); that said annexed notice was published on the following dates:

November 26 & December 2, 1997

and that the cost of publishing said annexed notice as aforesaid was $ 105.53

Signed Jack L. Scott
Jack L. Scott
Director of Advertising
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this 2nd day of December 19 97

My commission expires March 27, 2001

Diana L. Slone
Notary Public of Raleigh County, West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. SLONE
BECKLEY NEWSPAPER
P.O. DRAWER P OR B
BECKLEY, WV 25801
My Commission expires March 27, 2001

R/11

### 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 December 9, 1997 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 November 25, 1997, the Common Council (the "Council") of the City of Beckley, West Virginia (the "City"), adopted an 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 1997 A in the amount not to exceed $11,000,000.00, in order to provide funds to pay the cost of certain additions, improvements and betterments to the System, to refinance or reimburse the Sanitary Board for certain costs previously expended and to pay the costs of issuing the bonds.

3. Provided for the sale of the Series 1997 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 1997 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 1997 A Bonds; provided for the creation of a sinking fund for the Series 1997 A Bonds.

6. Provided for the disposition of bond proceeds; created a construction fund, a revenue fund and a reserve fund for the Series 1997 A Bonds.

7. Provided that the Series 1997 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 1997 Series A Bonds will be secured by a first lien on the net revenues of the System, which first lien shall be shared with the City's 1995 Series A Bonds presently outstanding in the amount of approximately $3,000,000.

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 average annual debt service on the Series 1995 A Bonds and the 1997 Series A Bonds and the obligations of the City payable from revenues of the System, unless the Series 1998 A Bonds Reserve Fund and the 1997 Series A Bonds Reserve Fund are fully funded, in which case, the debt service coverage may be reduced to 110%, except so long as the Series 1995 A Bonds are outstanding such rates shall conform to the requirements set forth in the ordinance authorizing the issuance of the Series 1998 A Bonds.

10. Provided that the System may be sold, transferred, mortgaged or leased 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 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 1997 A Bonds, provided for the security for the rights and remedies of the owners of the Series 1997 A Bonds including the appointment of a receiver.

13. Provided that the City will take such actions that may be required of it so that the interest on the Series 1997 A Bonds will be and remain excluded from gross income for federal income tax purposes.

The City of Beckley contemplates the issuance of the Series 1997 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, December 9, 1997, in the City Hall, 408 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 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 November 25, 1997, 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, W.Va.
12 2 Tue 2-RH

Mr. Matkovich opened the public hearing for comments. There being none, either for or against passage of the Ordinance, the public hearing was closed. On a motion by Councilman File and seconded by Councilman Rappold, the following Ordinance was unanimously approved by Council:

# CITY OF BECKLEY

## SEWER SYSTEM REVENUE BONDS

## SERIES 1997 A

## BOND ORDINANCE

Mr. Matkovich also presented for second reading and public hearing an ordinance restricting persons under 21 from possessing alcoholic beverages. Affifavit of Publication is hereinafter incorporated:

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS INC.

### BECKLEY, WEST VIRGINIA 25801

December 4, 19 97

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to-wit:

I, Jack L. Scott, being first duly sworn upon my oath, do depose and say that I am Director of Advertising 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 Notice of Public Hearing
(Description of notice)

was duly published in said newspaper once a week for One successive weeks (Class I ), commencing with the issue of the 4th day of December, 1997, and ending with the issue of the 4th day of December, 1997 and was posted at the

on the day of ; that said annexed notice was published on the following dates:

December 4, 1997

and that the cost of publishing said annexed notice as aforesaid was $ 106.54

Signed Jack L. Scott
Jack L. Scott
Director of Advertising
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this

4th day of December 19 97

My commission expires March 27, 2001

Diana L. Slone
Notary Public of Raleigh County,
West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. SLONE
BECKLEY LAW WORKER
P.O. DRAWER 1629
BECKLEY, WV 25801
My Commission Expires March 27, 2001

RJH

### 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 December 9, 1997 in Council Chambers of Beckley City Hall. All interested parties are urged to attend.

AN ORDINANCE ESTABLISHING 10.56 OF THE CODE OF THE CITY OF BECKLEY RESTRICTING PERSONS UNDER 21 FROM POSSESSING ALCOHOLIC BEVERAGES; PENALTIES

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY that Sec. 10.56 is hereby created as follows:

Sec. 10.56. Possession of Alcoholic Liquor by any Person Under 21; Penalties; Unlawful Acts by Persons.

(a) Any person under the age of twenty one years who purchases, consumes, sells, serves, or possesses alcoholic liquor or non-intoxicating beer is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars or shall be incarcerated in the regional jail for a period not to exceed seventy two hours, or both fined and imprisoned.

Nothing in this Section shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor or non-intoxicating beer.

Nothing in this Section shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor or non-intoxicating beer when he or she is acting upon the request of, or under the direction and control of, any member of State, federal, or local law enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the commissioner.

(b) Any person under the age of twenty one years who, for the purpose of purchasing alcoholic liquor or non-intoxicating beer from a retail licensee, misrepresents his or her age, or who, for such purpose, presents or offers any written evidence of age which is false, fraudulent, or not actually his or her own, or who illegally attempts to purchase alcoholic liquor or non-intoxicating beer from a retail licensee, is guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not to exceed fifty dollars or imprisoned in the regional jail for a period not to exceed seventy two hours, or both fined and imprisoned.

(c) Any person who knowingly buys for, gives to, or furnishes to any one under the age of twenty one to whom he or she is not related by blood or marriage any alcoholic liquor or non-intoxicating beer from whatever source is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars or imprisoned in the regional jail for a period not to exceed ten days, or both fined and imprisoned.

(d) No person, while on the premises of a retail outlet, may consume alcoholic liquor or non-intoxicating beer or break the seal on any package or bottle of alcoholic liquor or non-intoxicating beer. Any person who violates the provisions of this Subsection is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars or imprisoned in the regional jail for a period not to exceed ten days, or both fined and imprisoned.

(e) Definitions. For the purposes of this Section:

"Alcohol" shall mean ethyl alcohol whatever its origin and shall include synthetic ethyl alcohol but not denatured alcohol.

"Beer" shall mean any beverage obtained by the fermentation of barley, malt, hops, or any other similar product or substitute, and containing more alcohol than that of non intoxicating beer.

"Non intoxicating Beer" shall mean any beverage, obtained by the fermentation of barley, malt, hops, or similar products or substitute and containing not more alcohol than that specified by #11-16-2 of the West Virginia Code.

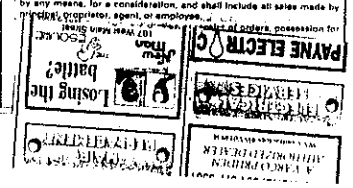
"Wine" shall mean any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products containing sugar.

"Spirits" shall mean any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution, and includes brandy, rum, whisky, cordials, and gin.

"Alcoholic Liquor" shall include alcohol, beer, wine, and spirits, and any liquid or solid capable of being used as a beverage, but shall not include non intoxicating beer.

"Original Package" shall mean any closed or sealed container or receptacle used for holding alcoholic liquor.

"Sale" shall mean any transfer, exchange, or barter in any manner or by any means, for a consideration, and shall include all sales made by [illegible] proprietor, agent, or employee.




Mr. Matkovich opened the public hearing for comments. There being none, either for or against passage of the Ordinance, the public hearing was closed. On a motion by Councilman Nickell and seconded by Councilman Rappold, the following Ordinance was unanimously approved by Council:

FIRST READING

11-11-97

SECOND READING

12-9-97

AN ORDINANCE ESTABLISHING 10-56 OF THE CODE OF THE CITY OF BECKLEY RESTRICTING PERSONS UNDER 21 FROM POSSESSING ALCOHOLIC BEVERAGES; PENALTIES

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(a) Any person under the age of twenty-one years who purchases, consumes, sells, serves, or possesses alcoholic liquor or non-intoxicating beer is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars or shall be incarcerated in the regional jail for a period not to exceed seventy-two hours, or both fined and imprisoned.

Nothing in this Section shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor or non-intoxicating beer.

Nothing in this Section shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor or non-intoxicating beer when he or she is acting upon the request of, or under the direction and control of, any member of a State, federal, or local law enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the commissioner.

(b) Any person under the age of twenty-one years who, for the purpose of purchasing alcoholic liquor or non-intoxicating beer from a retail licensee, misrepresents his or her age, or who, for such purpose, presents or offers any written evidence of age which is false, fraudulent, or not actually his or her own, or who illegally attempts to purchase alcoholic liquor or non-intoxicating beer from a retail licensee, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars or imprisoned in the regional jail for a period not to exceed seventy-two hours, or both fined and imprisoned.

(c) Any person who knowingly buys for, gives to, or furnishes to anyone under the age of twenty-one to whom he or she is not related by blood or marriage any alcoholic liquor or non-

Mr. Matkovich presented for first reading an Ordinance restricting parking on certain portions of Adamos Street. On a motion by Councilwoman Chambers and seconded by Councilman File, the first reading of this proposed Ordinance was unanimously approved by Council.

Under new business, the Mayor stated that the December 23, 1997 Council Meeting will be cancelled which recommendation was unanimously approved by Council on a motion by Councilman Holloban and seconded by Councilman Rappold.

The Mayor informed Council that there will be a ribbon cutting at the new parking lot on Neville Street at 9:00 a.m. on December 11, 1997.

Mr. Tom Milkowski thanked the City and the Mayor for the new parking lot on Neville Street.

Mr. Emil Hodel spoke to Council stating he feels more areas need to be annexed into the City limits, and there needs to be better service at the Raleigh County Airport.

With no further business to be addressed, the meeting adjourned at 7:50 p.m. on a motion by Councilman Nickell and seconded by Councilman Rappold.

MAYOR

RECORDER-TREASURER

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<br>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

SRF-LP-1
(September 1997)

# 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 DIVISION OF ENVIRONMENTAL PROTECTION, a division of the West Virginia Bureau of Environment (the "DEP"), and the local government designated below (the "Local Government").

CITY OF BECKLEY

(Local Government)

## WITNESSETH:

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 20, Article 5I, 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 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 construct, operate and improve a wastewater treatment project and to finance the cost of constructing or acquiring 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 of 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, at 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.

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. 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 Local Government on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Local Government shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority, DEP and the Local Government at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Government 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 Local Government shall notify DEP in writing of such receipt. The Local Government shall submit a Performance Certificate, the form of which is attached hereto as Exhibit A, and being incorporated herein by reference, to DEP within 60 days of the end of the first year after the Project is completed.

2.10 The Local Government shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Local Government 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 this Loan Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 25% completion stage.

2.11 The Local Government hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Authority, DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Local Government, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and forward a copy by the 10th of each month to the Authority.

2.13 The Local Government, during construction of the Project, shall complete Payment Requisition Forms, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward the Form to DEP in compliance with the Local Government's construction schedule.

## ARTICLE III

## Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and DEP to make the Loan is subject to the Local Government's fulfillment, to the satisfaction of the Authority and DEP, of each and all of those certain conditions precedent on or before the delivery date for the Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Local Government shall have delivered to the Authority a report listing the specific purposes for which the proceeds of the Loan will be expended and the procedures as to the disbursement of loan proceeds, including an estimated monthly draw schedule;

(b) The Local Government shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(c) The Local Government shall have authorized the issuance of and delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(d) The Local Government shall either have received bids or entered into contracts for the construction of the Project, which are in an amount and otherwise compatible with the plan of financing described in the Application; provided, that, if the Loan will refund an interim financing of construction, the Local Government must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and DEP shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit D;

(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") necessary for the construction of the Project and operation of the System, 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, 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 Subsection 4.1(b)(ii) hereof, and the Authority and DEP shall have received a certificate of the accountants 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 set forth in Exhibit E hereto.

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 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 approval of DEP.

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions established by federal and state regulations as set forth in Exhibit E hereto at such times as are set forth in Exhibit E.

## 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 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. The revenues generated from the operation of the System 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 an amount at least 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 the net revenues from the System;

(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 established for the payment of debt service on the Local Bonds is funded (whether by Local Bond proceeds, monthly deposits or otherwise) 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 will 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 be sold, mortgaged, leased or otherwise disposed of as a whole or substantially as a whole provided that the net proceeds to be realized from such sale, mortgage, lease or other deposition 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 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 any Local Bond owner 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 operation and maintenance expenses and debt service 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 for non-construction costs) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim funding 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 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 West Virginia Municipal Bond Commission (the "Commission") its required interest, principal and reserve fund 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 to the Authority by the 5th day of such calendar month;

(xvii) That the Commission shall serve as paying agent for all Local Bonds;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Code, 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 Code, 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, the Project is adequate for the purposes for which it was designed and the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project; and

(xx) That the Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the West Virginia Public Service Commission, 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 owned by the Local Government, then the Local Government shall enter into a termination agreement with the water provider.

The Local Government hereby represents and warrants that the Local Act has been or shall be duly adopted 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, 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 Authority 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, as set forth in the Local Act and in compliance with the provisions of Subsection 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 minimum sums set forth in the Local Act, 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 so as to provide funds sufficient to produce the minimum sums set forth in the Local Act and as required by this Loan Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to Section 4.2 hereof, 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 directly charges upon users 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 local governments in the terms and covenants of loan agreements, 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 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 Project, 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 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 Schedule 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 merges and 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) termination by the Authority and DEP pursuant to Section 6.2 hereof; or

(iii) 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 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 amount of the Loan made by the Authority and DEP as set forth in (iii) above is not terminated due to such non-funding on any balance on 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 shall not be considered an event of default under the Loan Agreement.

I certify that the above is a true and accurate of a Supplemental Resolution duly adopted by the Common Council of the City of Beckley at its regular meeting on February 24, 1998. This Supplemental Resolution is valid and in effect as of March 18, 1997.

Date:

3/18/98

Emmett S. Pugh III
Mayor
City of Beckley

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
[Proper Name of Local Government]

(SEAL)

By: _____
Its: Mayor

Attest:

Date: _____

_____
Its Recorder

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

By: _____
Its: Chief, Office of Water Resources

Date: _____

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: Daniel B Yankosky
Its: Director

Attest:

Date: January 29, 1998

Barbara B Meadows
Secretary-Treasurer

APPROVED AS TO FORM PRIOR TO ACKNOWLEDGEMENT THEREOF, THIS 25th day of September 19 97
DARRELL V. McGRAW, JR.
ATTORNEY GENERAL
By: Laura E Wakefield
DEPUTY ATTORNEY GENERAL

EXHIBIT A

[Form of Performance Certificate]

[TO BE PROVIDED BY DEP]

EXHIBIT B

[Form of Monthly Financial Report]
[Name of Local Government]
[Name of Bond Issue]
Fiscal Year - __
Report Month: _____

| | ITEM | CURRENT MONTH | YEAR TO DATE | BUDGET YEAR TO DATE | BUDGET DIFFERENCE |
|---|---|---|---|---|---|
| 1. | Gross Revenues Collected | | | | |
| 2. | Operation and Maintenance Expense | | | | |
| 3. | Other Bond Debt Payments (including Reserve Fund deposits) | | | | |
| 4. | SRF Bond Payments (include Reserve Fund deposits) | | | | |
| 5. | Renewal and Replacement Fund Deposit | | | | |
| 6. | Funds available for capital construction | | | | |

Witnesseth my signature this __ day of ____, ____.

[Name of Local Government]

By: _____
Authorized Officer

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 that my firm is engineer for the acquisition and construction of _____ to the _____ system (herein called the "Project") of _____ (the "Issuer") to be constructed primarily in _____County, West Virginia, which construction and acquisition are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meaning set forth in the _____ passed by the _____ of the Issuer on _____, 19___, effective _____, 19___, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Division of Environmental Protection ("DEP") dated _____, 19___.

1. The Bonds are being issued for the purpose of _____ _____ (the "Project").

2. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the application submitted to the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least twenty years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application and my firm has ascertained that all contractors 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 by my firm for accuracy, (iv) the Issuer has obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, (v) the rates and charges for the System as adopted by the ____ of the Issuer are sufficient to comply with the provisions of Subsection 4.1(b) of the Loan Agreement, (vi) 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 irrevocably committed therefor, are sufficient to pay the costs of construction and

acquisition of the Project as set forth in the Application, and (vii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this _____ day of _____, 19___.

_____

By _____

West Virginia License No. __

[SEAL]

EXHIBIT E

SPECIAL CONDITIONS

A. The recipient agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations 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)) - The loan recipient that receives $25,000 or more in a fiscal year must obtain audits in accordance with the Single Audit Act of 1984 and OMB Circular 128. Financial statement audits are required once all funds have been received by the loan recipient.

EXHIBIT F

[Monthly Payment Form]

West Virginia Water Development
Authority
1201 Dunbar Avenue
Dunbar, WV 25064

Re: [Name of bond issue]

Dear Sirs:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Local Government] on _____, __.

Sinking Fund:

Interest $_____

Principal $_____

Total: $_____

Reserve Fund: $_____

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
1201 Dunbar Avenue
Dunbar, West Virginia 25064

Gentlemen:

We are bond counsel to _____ (the "Local Government"), a _____.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated _____, 19__, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Local Government and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, 19__ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of $_____, issued in the form of one bond registered as to principal and interest to the Authority, with interest payable _____ 1, ____ 1, ____ 1, and ____ 1 of each year, beginning _____ 1, 19__, at the respective rate or rates and with principal payable in installments on ____ 1 in each of the years, all as follows:

| Year | Installment | Interest Rate |
|---|---|---|

The Local Bonds are issued for the purpose of _____ and 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 enacted by the Local Government on _____ (the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that 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 cannot be amended so as to affect adversely the rights of the Authority or diminish the obligations of the Local Government without the consent of the Authority.

3. The Local Government is a duly organized and presently existing _____ _____, with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Government has legally and effectively enacted the Local Act and all other necessary _____ in connection with the issuance and sale of the Local Bonds. 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 are valid and legally enforceable special obligations of the Local Government, payable from the net revenues of the System referred to in the Local Act and secured by a [first] lien on and pledge of the net revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

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 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 BONDS

| | |
|---|---|
| Principal Amount of Bonds | $ 11,000,000.00 |
| Purchase Price of Bonds | $ 11,000,000.00 |

Interest on the Bonds shall be zero percent from the date of delivery to and including February 29, 2000. Principal and interest on the Bonds is payable quarterly, commencing June 1, 2000, at a rate of 2 % per annum. Quarterly payments will be made thereafter on each September 1, December 1, March 1 and June 1 as set forth on Schedule Y attached hereto and incorporated herein by reference. As of the date of this Loan Agreement, it is the Authority's and DEP's understanding that the Local Government has [other obligations outstanding which have a lien as to the source of and security for payment equal to or superior to the lien being granted by the Bonds] or [provide list of outstanding debt]. (See attached schedule) *

The Local Government shall submit its payments monthly to the West Virginia Municipal Bond Commission with instructions that the West Virginia Municipal Bond Commission will make quarterly payments to the West Virginia Water Development Authority at such address as is given to the Bond Commission in writing by the Authority. If the Reserve Fund 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 Bond Commission. The Local Government shall instruct the Bond 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 Bonds will be fully registered in the name of the West Virginia Water Development Authority as to principal and interest and such Bonds shall grant the Authority a first lien on the net revenues of the Local Government's system.

The Local Government may prepay the 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 Bonds which request must be filed at least 60 days prior to the intended date of issuance.

*City of Beckley Sewerage System Refunding Revenue Bonds, Series 1995A, issued April 1, 1995, in the original principal amount of $3,095,000.

# SCHEDULE Y

City of Beckley, West Virginia
$11,000,000 Loan
20 Years, 2% Interest, 1% Admin Fee

DEBT SERVICE SCHEDULE

| Date | Principal | Coupon | Interest | Total P+I |
|---|---|---|---|---|
| 3/01/2000 | - | - | - | - |
| 6/01/2000 | 112,167.00 | 2.000% | 55,000.00 | 167,167.00 |
| 9/01/2000 | 112,728.00 | 2.000% | 54,439.17 | 167,167.17 |
| 12/01/2000 | 113,292.00 | 2.000% | 53,875.53 | 167,167.53 |
| 3/01/2001 | 113,858.00 | 2.000% | 53,309.07 | 167,167.07 |
| 6/01/2001 | 114,428.00 | 2.000% | 52,739.78 | 167,167.78 |
| 9/01/2001 | 115,000.00 | 2.000% | 52,167.64 | 167,167.64 |
| 12/01/2001 | 115,575.00 | 2.000% | 51,592.64 | 167,167.64 |
| 3/01/2002 | 116,153.00 | 2.000% | 51,014.76 | 167,167.76 |
| 6/01/2002 | 116,733.00 | 2.000% | 50,434.00 | 167,167.00 |
| 9/01/2002 | 117,317.00 | 2.000% | 49,850.33 | 167,167.33 |
| 12/01/2002 | 117,904.00 | 2.000% | 49,263.75 | 167,167.75 |
| 3/01/2003 | 118,493.00 | 2.000% | 48,674.23 | 167,167.23 |
| 6/01/2003 | 119,086.00 | 2.000% | 48,081.76 | 167,167.76 |
| 9/01/2003 | 119,681.00 | 2.000% | 47,486.33 | 167,167.33 |
| 12/01/2003 | 120,279.00 | 2.000% | 46,887.93 | 167,166.93 |
| 3/01/2004 | 120,881.00 | 2.000% | 46,286.53 | 167,167.53 |
| 6/01/2004 | 121,485.00 | 2.000% | 45,682.13 | 167,167.13 |
| 9/01/2004 | 122,093.00 | 2.000% | 45,074.70 | 167,167.70 |
| 12/01/2004 | 122,703.00 | 2.000% | 44,464.24 | 167,167.24 |
| 3/01/2005 | 123,317.00 | 2.000% | 43,850.72 | 167,167.72 |
| 6/01/2005 | 123,933.00 | 2.000% | 43,234.14 | 167,167.14 |
| 9/01/2005 | 124,553.00 | 2.000% | 42,614.47 | 167,167.47 |
| 12/01/2005 | 125,176.00 | 2.000% | 41,991.71 | 167,167.71 |
| 3/01/2006 | 125,802.00 | 2.000% | 41,365.83 | 167,167.83 |
| 6/01/2006 | 126,431.00 | 2.000% | 40,736.82 | 167,167.82 |
| 9/01/2006 | 127,063.00 | 2.000% | 40,104.66 | 167,167.66 |
| 12/01/2006 | 127,698.00 | 2.000% | 39,469.35 | 167,167.35 |
| 3/01/2007 | 128,337.00 | 2.000% | 38,830.86 | 167,167.86 |
| 6/01/2007 | 128,978.00 | 2.000% | 38,189.17 | 167,167.17 |
| 9/01/2007 | 129,623.00 | 2.000% | 37,544.28 | 167,167.28 |
| 12/01/2007 | 130,271.00 | 2.000% | 36,896.17 | 167,167.17 |
| 3/01/2008 | 130,923.00 | 2.000% | 36,244.81 | 167,167.81 |
| 6/01/2008 | 131,577.00 | 2.000% | 35,590.20 | 167,167.20 |
| 9/01/2008 | 132,235.00 | 2.000% | 34,932.31 | 167,167.31 |
| 12/01/2008 | 132,896.00 | 2.000% | 34,271.14 | 167,167.14 |
| 3/01/2009 | 133,561.00 | 2.000% | 33,606.66 | 167,167.66 |
| 6/01/2009 | 134,229.00 | 2.000% | 32,938.85 | 167,167.85 |
| 9/01/2009 | 134,900.00 | 2.000% | 32,267.71 | 167,167.71 |
| 12/01/2009 | 135,574.00 | 2.000% | 31,593.21 | 167,167.21 |
| 3/01/2010 | 136,252.00 | 2.000% | 30,915.34 | 167,167.34 |
| 6/01/2010 | 136,933.00 | 2.000% | 30,234.08 | 167,167.08 |
| 9/01/2010 | 137,618.00 | 2.000% | 29,549.41 | 167,167.41 |
| 12/01/2010 | 138,306.00 | 2.000% | 28,861.32 | 167,167.32 |
| 3/01/2011 | 138,998.00 | 2.000% | 28,169.79 | 167,167.79 |

City of Beckley, West Virginia
$11,000,000 Loan
20 Years, 2% Interest, 1% Admin Fee

DEBT SERVICE SCHEDULE

| Date | Principal | Coupon | Interest | Total P+I |
|---|---|---|---|---|
| 6/01/2011 | 139,693.00 | 2.000% | 27,474.80 | 167,167.80 |
| 9/01/2011 | 140,391.00 | 2.000% | 26,776.34 | 167,167.34 |
| 12/01/2011 | 141,093.00 | 2.000% | 26,074.38 | 167,167.38 |
| 3/01/2012 | 141,798.00 | 2.000% | 25,368.92 | 167,166.92 |
| 6/01/2012 | 142,507.00 | 2.000% | 24,659.93 | 167,166.93 |
| 9/01/2012 | 143,220.00 | 2.000% | 23,947.39 | 167,167.39 |
| 12/01/2012 | 143,936.00 | 2.000% | 23,231.29 | 167,167.29 |
| 3/01/2013 | 144,656.00 | 2.000% | 22,511.61 | 167,167.61 |
| 6/01/2013 | 145,379.00 | 2.000% | 21,788.33 | 167,167.33 |
| 9/01/2013 | 146,106.00 | 2.000% | 21,061.44 | 167,167.44 |
| 12/01/2013 | 146,836.00 | 2.000% | 20,330.91 | 167,166.91 |
| 3/01/2014 | 147,571.00 | 2.000% | 19,596.73 | 167,167.73 |
| 6/01/2014 | 148,308.00 | 2.000% | 18,858.87 | 167,166.87 |
| 9/01/2014 | 149,050.00 | 2.000% | 18,117.33 | 167,167.33 |
| 12/01/2014 | 149,795.00 | 2.000% | 17,372.08 | 167,167.08 |
| 3/01/2015 | 150,544.00 | 2.000% | 16,623.11 | 167,167.11 |
| 6/01/2015 | 151,297.00 | 2.000% | 15,870.39 | 167,167.39 |
| 9/01/2015 | 152,053.00 | 2.000% | 15,113.90 | 167,166.90 |
| 12/01/2015 | 152,814.00 | 2.000% | 14,353.64 | 167,167.64 |
| 3/01/2016 | 153,578.00 | 2.000% | 13,589.57 | 167,167.57 |
| 6/01/2016 | 154,346.00 | 2.000% | 12,821.68 | 167,167.68 |
| 9/01/2016 | 155,117.00 | 2.000% | 12,049.95 | 167,166.95 |
| 12/01/2016 | 155,893.00 | 2.000% | 11,274.36 | 167,167.36 |
| 3/01/2017 | 156,672.00 | 2.000% | 10,494.90 | 167,166.90 |
| 6/01/2017 | 157,456.00 | 2.000% | 9,711.54 | 167,167.54 |
| 9/01/2017 | 158,243.00 | 2.000% | 8,924.26 | 167,167.26 |
| 12/01/2017 | 159,034.00 | 2.000% | 8,133.04 | 167,167.04 |
| 3/01/2018 | 159,830.00 | 2.000% | 7,337.87 | 167,167.87 |
| 6/01/2018 | 160,629.00 | 2.000% | 6,538.72 | 167,167.72 |
| 9/01/2018 | 161,432.00 | 2.000% | 5,735.58 | 167,167.58 |
| 12/01/2018 | 162,239.00 | 2.000% | 4,928.42 | 167,167.42 |
| 3/01/2019 | 163,050.00 | 2.000% | 4,117.22 | 167,167.22 |
| 6/01/2019 | 163,865.00 | 2.000% | 3,301.97 | 167,166.97 |
| 9/01/2019 | 164,685.00 | 2.000% | 2,482.65 | 167,167.65 |
| 12/01/2019 | 165,508.00 | 2.000% | 1,659.22 | 167,167.22 |
| 3/01/2020 | 166,336.00 | 2.000% | 831.68 | 167,167.68 |
| TOTAL | 11,000,000.00 | - | 2,373,391.55 | 13,373,391.55 * |

* Plus $14,833.70 one-percent administrative fee paid quarterly. Total fee paid over the life of the loan is $1,186,696.

REVISED: 07/07/92

# PAYMENT REQUISITION FORM

1. LOAN RECIPIENT/VENDOR:

NAME: City of Beckley

ADDRESS: P. O. Box AC

Beckley, WV 25802

TELEPHONE: (304) 256-1760

FEIN: 55-6000144

2. SRF PROJECT NO. C 544 057

3. INVOICE NUMBER: 1

4. PERIOD COVERED BY THIS REQUEST:

FROM (MO/DAY/YR) TO (MO/DAY/YR)

08/01/95 02/23/98

5. PERCENTAGE OF PHYSICAL CONSTRUCTION COMPLETION 6 %

| CLASSIFICATION | A) APPROVED BUDGET | B) PREVIOUS APPROVED TOTALS | C) THIS REQUEST | D) TOTAL (B&C) | E) APPROVED AGENCY USE ONLY |
|---|---|---|---|---|---|
| 1) CONSTRUCTION | 8,726,125 ✓ | | 507,125 ✓ | 507,125 ✓ | 507,125 |
| 2) Equipment | 1,172,778 ✓ | | | | |
| 3) TECHNICAL SERVICES-a. Design | 410,510 ✓ | | 410,510 ✓ | 410,510 ✓ | 410,510 |
| b. Basic | 164,885 ✓ | | | | |
| c. Inspection | 273,890 ✓ | | | | |
| d. Other Services | 74,800 ✓ | | | | |
| 3) A/E Contract I | 28,280 ✓ | | 28,280 ✓ | 28,280 ✓ | 28,280 |
| 5) LAND | | | | | |
| 6) FEE INTEREST | | | | | |
| 7) LOAN REPAYMENT | | | | | |
| 8) CONTINGENCY | 133,732 ✓ | | | | |
| 9) INTERIM FINANCING COSTS | | | | | |
| 10) RESERVE FUND | | | | | |
| 11) CLOSING COST | 15,000 ✓ | | 15,000 ✓ | 15,000 ✓ | 15,000 |
| 12) SUBTOTAL | 11,000,000 ✓ | | 960,915 ✓ | 960,915 ✓ | 960,915 |
| 13) LESS PREVIOUSLY PAID | | | | | - 0 - |
| 14) INVOICE AMOUNT | | | | | 960,915 |

15) RECIPIENT AUTHORIZED SIGNATURE:

02/23/98
INVOICE DATE

Emmett S. Pugh III, Mayor/SB Chairman
TYPED OR PRINTED NAME AND TITLE

16) SIGNATURE OF PERSON PREPARING THIS REQUEST

02/23/98
DATE

Kenneth W. Richmond, SB General Manager
TYPED OR PRINTED NAME AND TITLE

AGENCY USE ONLY
THIS REQUEST APPROVED BY:
WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

PROJECT REVIEWER/BRANCH LEADER — DATE 2/25/98

AUTHORIZED OFFICER — DATE 2/26/98

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

AUTHORIZED OFFICER — DATE 2/27/98

ACCOUNTING CLASSIFICATION - DEP USE ONLY

ACCOUNT NUMBER:
350-2
350-1

AMOUNT APPROVED:
96 861,442
100,473

SF - 91

AGENCY: ENVIRONMENTAL PROTECTION
TOTAL: $960,915.00

| TRANSACTION ID | INVOICE NUMBER & | PAYEE REFERENCE | INVOICE DATE | PURCHASE ORDER | AMOUNT |
|---|---|---|---|---|---|
| I003126751 1, | C544-057 | | | | $960,915.00 |

WARRANT #: 4-0052366
DATE: 03/05/98

If you have questions concerning the above, please call 304-759-0507.

REMOVE DOCUMENT ALONG THIS PERFORATION

CTL# 8579519

THIS CHECK HAS MULTIPLE SECURITY FEATURES TO DETER FRAUD AND COUNTERFEITING
VOID UNLESS PRESENTED FOR PAYMENT WITHIN SIX MONTHS

# State of West Virginia

STATE CAPITOL, CHARLESTON

WARRANT # 4-0052366

PAY TO THE ORDER OF CITY OF BECKLEY

MARCH 05, 1998

4-0052366

**********$960,915.00**

STATE TREASURER

Glen B Gainey III
AUDITOR

WEST VIRGINIA TREASURY

⑈4005236 6⑈ ⑆051902322⑆ 99931 0⑈6⑈

A REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF BECKLEY CONVENED AT 7:30 P.M., TUESDAY, FEBRUARY 24, 1998, IN COUNCIL CHAMBERS OF BECKLEY CITY HALL.

THOSE PRESENT: Mayor Emmett G. Pugh III; Council Members William M. Fitz III, Steve Nickell, Tim Berry, Hedrick Chambers, Howard Holliday, and Robert Rappold; Recorder-Treasurer Gary Sullivan; City Attorney [illegible] and Secretary Linda Carr.

THOSE ABSENT: Councilman A. E. Hester, Jr.

ALSO PRESENT: Fire Chief Paul Bragg, Director of Recreation Mike Pendl Morris, Street Commissioner Robert Robinson, Director of Housing and Community Development Manuel Carballo, General Manager of Sanitary Board Ron Richardon, and Chief of Code Enforcement Robert Brown.

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 Fitz and seconded by Councilman Rappold.

The Mayor announced this as the date advertised for receipt of bids for the purchase of drainage pipe, asphalt, concrete, river sand, #9 abrasives, reinforcement rods, paint, sign materials, and tape. Affidavit of Publication is hereinafter incorporated:

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS INC.

### BECKLEY, WEST VIRGINIA 25801

February 16, 19 98

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to-wit:

I, Jack L. Scott, being first duly sworn upon my oath, do depose and say that I am Director of Advertising 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 Notice to Bidders
(Description of notice)

was duly published in said newspaper once a week for TWO successive weeks (Class II), commencing with the issue of the 9th day of February, 1998, and ending with the issue of the 16th day of February, 1998 (and was posted at the _____ on the _____ day of _____); that said annexed notice was published on the following dates: _____ February 9 & 16, 1998 _____ and that the cost of publishing said annexed notice as aforesaid was $ 150.08

Signed Jack L. Scott
Jack L. Scott
Director of Advertising
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this 16th day of February 19 98

My commission expires March 27, 2001

Notary Public of Raleigh County, West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. SCOTT
BECKLEY NEWSPAPERS
P.O. DRAWER A.D. (01)
BECKLEY, WV 25801
My Commission Expires March 27, 2001

R/H

COPY OF PUBLICATION

NOTICE TO BIDDERS

The Common Council of the City of Beckley will accept sealed bids for the following materials to be used by the Department of Public Works.

A. DRAINAGE PIPE
12" Corrugated Metal Pipe, Armco Aluminized;
15" Corrugated Metal Pipe, Armco Aluminized;
18" Corrugated Metal Pipe, Armco Aluminized;
24" Corrugated Metal Pipe, Armco Aluminized;
30" Corrugated Metal Pipe, Armco Aluminized;
36" Corrugated Metal Pipe, Armco Aluminized;
4 Ft. Corrugated Metal Pipe, Armco Aluminized
5 Ft. Corrugated Metal Pipe, Armco Aluminized
12" Armco Aluminized Bands;
15" Armco Aluminized Bands;
18" Armco Aluminized Bands;
24" Armco Aluminized Bands;
30" Armco Aluminized Bands;
36" Armco Aluminized Bands;
4 Ft. Armco Aluminized Bands;
5 Ft. Armco Aluminized Bands;
For City of Beckley Stockyard
**All pipe should be 14 gauge and all bids for (20) twenty foot length pipes.

B. ASPHALT
Base 2 or Patching Leveling I (Asphalt);
Wearing I (Asphalt);
Curb Mix I (Asphalt);
Fairing Mix
**As per West Virginia Department of Highways standard specifications, we desire the price per tone of the above material. Asphalt must be supplied day or night with notification on one (1) day in advance.

C. STONE
Class I Base Course Crusher Run (Stone)
**As per West Virginia Department of Highways standard specifications, we desire the delivered price per ton.

D. CONCRETE
2500 PSI;
3000 PSI;
3500 PSI;
4000 PSI;
**We desire the price per yard on the above material. Concrete must be supplied day or night with one (1) day advance notification. Additional specifications for concrete must be obtained from the Board of Public Works.

E. RIVER SAND
We desire the price per ton delivered to stockyard by the old Animal Shelter.

F. #9 ABRASIVES
We request per ton prices for pickup up and delivered Abrasives.

G. REINFORCEMENT RODS
Rebar - Size 3 thru 8
Grade 60 - Approximately 5 to 10 tons
**We desire the price per ton delivered.

H. PAINT
15 5 Gallon - #210 White Traffic Paint;
30 5 Gallon - #211 Yellow Traffic Paint

I. SIGN MATERIAL
25 - Cross 90 Degree Brackets;
25 - 45 Degree Brackets;
25 - Straight Leg Brackets;
20 - 12'x36 Flat and Extruded
25 - U Channel Sign Post
200 - Banding Strapping - 3/4" (Stainless Steel)
25 - Aluminum Post Clamps for Round Posts (2")
25 - 30"x30 Stop Sign Decals
10 - 36"x36 Stop Sign Decals
40 - 24"x24 Stop Sign Decals

J. TAPE
1 Roll Each - 24"x50 Reflective Sheeting-Pressure Sensitive (Black)
1 Roll Each - 24"x50 Yards/Heat Activated Sheeting (White, Green, Blue, Red)
40 Rolls - 4"x50 Yards Traffic Tape White
25 Rolls - 4"x50 Yards Traffic Tape Yellow
20 Rolls - 6"x50 Yards Traffic Tape White
5 - 5 Gallons Traffic Glue

Bids will be received until 3:30 p.m., Tuesday, February 24, 1998 at which time they will be publicly opened and read aloud. Bids must be submitted to the Recorder-Treasurer in sealed envelopes clearly marked to indicate contents. Bids may be hand delivered to 409 South Kanawha Street, or mailed to P.O. Drawer A.D., Beckley, West Virginia 25802-2612. The Common Council reserves the right to accept or reject any or all bids or any part of any bids without cause.

CITY OF BECKLEY
GARY R. SULLIVAN
RECORDER-TREASURER
2-16 Mon 2 PM

The Mayor announced and read the following bids:

BOXLEY

**QUOTE ONLY - NOT AN INVOICE** Page 1

Lamb's Concrete
1636 Highway 41

Summersville, WV 26651
(304)872-1646
SUMMERSVILLE

Sales Ord No. 005132
Order Type QT
Order Date 02/16/98
Ship Date
Terms Net 30 Days

Bill To:
QUOTE
CITY OF BECKLEY
ATT: GARY SUTPHIN

Ship To:
QUOTE

| Item | Unit | Order Quantity | Quantity Shipped | Unit Price | Total |
|---|---|---|---|---|---|
| CONCLAMB3R1<br>3R1 - 3000 PSI | YARD | 0.00 | 0.00 | 64.00 | 0.00 |
| CONCLAMB35R22<br>35R22 - 3500 PSI | YARD | 0.00 | 0.00 | 66.00 | 0.00 |
| CONCLAMB4R2<br>4R2 - 4000 PSI | YARD | 0.00 | 0.00 | 68.00 | 0.00 |
| CONCCHRG5PM<br>AFTER 5PM (NIGHT POURS) | EACH | 0.00 | 0.00 | 15.00 | 0.00 |
| CONCSOSNICE<br>ICE IF NEEDED | BAG | 0.00 | 0.00 | 1.50 | 0.00 |
| CONCMISCWATER<br>HOT WATER IF NEEDED | GAL | 0.00 | 0.00 | 5.00 | 0.00 |

THESE PRICES ARE BASED ON 5 YDS OR MORE AT A TIME.

APPROVED BY: Lynn D. Osborne

| | |
|---|---|
| Sales Total | 0.00 |
| Trade Discount | 0.00 |
| Freight | 0.00 |
| Misc. Charges | 0.00 |

**BECKLEY STONE CO. INC.**
**PO BOX 1284**
**BECKLEY WV. 25802**

SEALED BID: CRUSHED STONE
[CLASS 1 AGGREGATE BASE COURSE

February 23, 1998

City Of Beckley
Recorder- Treasurer's Office
409 S.Kanawha Street
Beckley WV. 25802-2832

Dear COUNCIL MEMBERS

As per your bid request of February 9, 1998, Beckley Stone Company Inc. quotes the class 1 aggregate base course meeting the specifications of The West Virginia Department Of Highways at the cost of $7.95 per ton delivered in the city limits of Beckley , West Virginia , This price shall remain firm through March 1999

Sincerely,
Kenneth E. Bragg

Kenneth E. Bragg

Sales Manager

**BECKLEY STONE CO. INC.**
**PO BOX 1284**
**BECKLEY WV. 25802**

February 23, 1998

City Of Beckley
Recorder- Treasurer's Office
409 S.Kanawha Street
Beckley WV. 25802-2832

RE; CONCRETE BID

As per your bid request of February 9, 1998, Beckley Stone Company Inc. quotes the Following prices for ready mix concrete delivered in the City Limits of Beckley, West Virginia

| | |
|---|---|
| 2500 PSI CONCRETE | $63.00 PER CUBIC YARD |
| 3000 PSI CONCRETE | $63.00 PER CUBIC YARD |
| 3500 PSI CONCRETE | $67.50 PER CUBIC YARD |
| 4000 PSI CONCRETE (MIN.6 BAGS CEMENT) | $74.50 PER CUBIC YARD |
| EXTRA CHARGE FOR NIGHT POURS | $10.00 PER CUBIC YARD |

THE ABOVE PRICES ARE BASED ON 6 CUBIC YARDS PER LOAD.

A SHORT LOAD CHARGE OF $6.00 PER CUBIC YARD FOR EACH YARD UNDER THE 6 CU.YD.MINIMUM SHALL APPLY, THERE WILL BE NO EXTRA CHARGE ON FINISH UP LOADS.

ALL ITEMS ABOVE ARE QUOTED AS PER THE SPECIFICATIONS OBTAINED FROM THE CITY OF BECKLEY BOARD OF PUBLIC WORKS OFFICE OF WHICH I HAVE ATTACHED A COPY TO THIS QUOTATION.

SINCERLEY,

KENNETH E. BRAGG

SALES MANAGER

**Southern West Virginia Asphalt, Inc.**
1915 Riverside Drive
Rainelle, West Virginia 25962
**WV 020470**

**(304) 438-8541 Telephone** **"DEDICATED TO QUALITY"** **(304) 438-9287 Fax**

February 24, 1998

The Common Council
CITY OF BECKLEY
P.O. Drawer AJ
Beckley, WV 25802-2832

Dear Council Members and Mayor:

As per your newspaper advertisement for 1998 pricing, we respectfully submit the following bid for asphalt materials:

| | | |
|---|---|---|
| Item B: WVDOH ASPHALT; | Base 2 | : $ 25.50 per ton |
| | Wearing I | : $ 26.50 per ton |
| | Curb Mix | : $ 35.00 per ton |
| | Tennis Mix | : $ 35.00 per ton |

The above quoted price is good at either our Sprague or Beaver, WV, plant locations.

Thank you,

David R. Tal

W.W. BOXLEY CO.

# QUOTATION

P.O. BOX 13527
ROANOKE, VA. 24035
(703) 344-6601

TO: COMMON COUNCIL
CITY OF BECKLEY
409 SOUTH KANAWHA STREET
BECKLEY, WV 25802
ATTN: GARY SUTPHIN
PHONE:

RETURN TO: Greenbrier Limestone Corp.
Route 5 — Box 49
Lewisburg, WV 24901
1-800-BOXLEY 1
(THAT'S) 1-800-269-5391
PHONE: (304) 392-5872

PROJECT/CONTRACT NO: ~~DELIVERED TO OLD~~ ~~ANIMAL SHELTER~~
BID DATE: 02/18/98
CUSTOMER NUMBER:
JOB LOCATION: BECKLEY, WV
JOB DESIGNATION:
JOB DURATION: BECKLEY, WV
PRICE FIRM THRU:

| QUANTITY | STONE GRADE | AGGREGATE SIZE & DESCRIPTION | FOB PLANT OR YARD | TAX | FREIGHT | DELIVERED PRICE |
|---|---|---|---|---|---|---|
| | | CLASS 1 BASE COURSE C.R. | $4.40 | | $5.00 | $9.40 |
| | | #9 ABRASIVE | $5.50 | | $5.00 | $10.50 |

TERMS: NET
10 / TON DISCOUNT
IF PAID WITHIN 15 DAYS
OF INVOICE DATE

FINANCE CHARGE OF 1½% PER MONTH, 18% PER ANNUM ON BALANCES UNPAID 60 DAYS AFTER BILLING CYCLE DATE.

REMARKS:

ACCEPTED BY:
TITLE:
DATE:

BY: Doug Canterbury
DOUG CANTERBURY
W.W. BOXLEY CO.
DATE: 02/18/98

QUOTE NUMBER

Quality From The Ground Up.

# David Hill Concrete, Inc.

P. O. Box 453
MABSCOTT, WEST VIRGINIA 25871
(304) 252-0691

February 24, 1998

Attn: Gary R. Sutphin, Recorder-Treasurer
City of Beckley
P.O. Drawer AJ
Beckley, WV 25802-2832

Dear Mr. Sutphin:

We are pleased to quote you the following prices for concrete delivered to the City of Beckley:

| | |
|---|---|
| 2,500 P.S.I. | $55.35/yd. |
| 3,000 P.S.I. | $56.75/yd. |
| 3,500 P.S.I. | $58.35/yd. |
| 4,000 P.S.I. | $62.25/yd. |

The above quoted prices shall be firm thru March, 1999.

Sale Terms: Net 30 days.

Add-Ons:

$2.00 Per yard for Hot-Water (Cold Weather Concreting).

_____ Less than five (5) yard delivereies shall be pro-rated except finish-up load.

$3.00 Per yard for deliveries made at 4:00 p.m. or after Monday thru Friday.

$3.00 Per yard shall be charged for Saturday. No Sunday deliveries except in case of emergency.

_____ Any additives such as accelerators, plasticizers, fibers, etc. shall be charged according to the product used and dosages required.

One day advanced notice (24) hours for scheduling concrete Monday thru Friday is acceptable. However, a seventy-two (72) hour advanced notice shall be required for any Saturday or Sunday pours.

Please do not hesitate to call should you have any questions regarding this bid quotation.

Sincerely yours,

Steve Hill

Steven Hill
Vice President

BECKLEY PAINT & WALLPAPER, INC
312 BECKLEY PLAZA
BECKLEY, WV 25801
304-255-7612

105212
CITY OF BECKLEY
PO DRAWER AJ
BECKLEY, WV 25802

PRICE QUOTATION
DATE 02/23/98
TIME 11:04 AM
PAGE# 1

SALESPRSN# 15 DENNIS WALLER

| QTY | ITEM # | DESCRIPTION | PRICE | AMOUNT |
|---|---|---|---|---|
| 15 | TN52 | ROADRUNNER WHITE FIVE GAL | 54.23 | 813.45 |
| 30 | LFY53 | LF ROADRUNNER YELLOW 5GL | 58.57 | 1,757.10 |

# QUOTATION

**Roxanne Chambers**
ph: 800 331 8118
fax: 800 355 0213

EP

**DATE:** 2/23/98

**REF.NO.** WV-98-0047-RC

**TO:**
City of Beckley
409 S. Kanawha Street
Beckley, West Virginia 25802
ATTN: MR. ROBERT ROBINSON
**Phone:** 304-256-1741
**Fax:**

**Control No.:** n/a
**Project No.:** n/a
**County:** n/a
**Highway:** n/a
**Bid Date:** February 24, 1998 by 7:30 pm

**WE PROPOSE TO SUPPLY THE FOLLOWING SPECIFIED TRAFFIC PAINT AS FOLLOWS:**

| QUAN. | UNIT | DESCRIPTION | COLOR | $ / Gal | EXTENSION |
|---|---|---|---|---|---|
| 75 | gallons | (15 ea.- 5-gal. Pails) Lead Free, Waterborne, Traffic Paint | White | $ 7.29 | $ 546.75 |
| 150 | gallons | (30 ea.- 5-gal. Pails) Lead Free, Waterborne, Traffic Paint | Yellow | $ 7.76 | $ 1,164.00 |

**BIDDING ON AN "ALL or NONE" BASIS.**

**TOTAL BID $ 1,710.75**

**Specification:** Federal Spec. TT-P-1952-D

**FOB POINT** Beckley, W.V.

**SHIPMENT:** 5-10 days A.R.O.

**Terms:** 30 DAYS FOR GOVERNMENT AGENCIES
Private Entities:

a: 60 days with standby bank letter of credit.

b: 30 days with acceptable credit arrangements and a payment and performance bond on job.

SALES TAX NOT INCLUDED
QUOTE EXPIRES IF NOT ACCEPTED IN 30 DAYS.

Roxanne G. Chambers

**Roxanne G. Chambers**

***Comments:***

quote form

Columbia Paint Corporation

P.O. BOX 2888 641 JACKSON AVENUE HUNTINGTON, WV 25728 PHONE (304) 529-3211

February 20, 1988

Robert Bronson, Chairman
Board of Public Works
City Of Beckley
409 S. Kanawha Street
Beckley, WV 25802

Re: Department of Public Works
H. Paint

15 5 Gallon Pails #210 White Traffic Paint $12.00 / gal
$60.00 / 5 gal

Total for #210 White $900.00

30 5 Gallon Pails #211 Yellow Traffic Paint $13.95 / gal
$69.75 / 5 gal

Total for #211 Yellow $2092.50

Above prices are freight pre-paid to your facility.
Thank you for the opportunity to submit a bid.

Sincerely,

Joe Hoffer
Vie President of Sales

JH/bh

cc: file
Vivian

# WEST VIRGINIA
# PAINT AND DECORATING CENTER, INC.

• LICENSED & INSURED
• FREE ESTIMATES
• RESIDENTIAL
• COMMERCIAL

508 NORTH EISENHOWER DRIVE
BECKLEY, WV 25801

(304) 252-9660
FAX 252-9671


February 24, 1998

To: The City of Beckley
Robert Robinson

From: Martha Estes
WV Paint and Decorating

Reg: Bid for The City of Beckley

I am submitting a quote for Traffic Marking Paint as requested:

DEVOE ALKYD TRAFFIC MARKING PAINT

| | | |
|---|---|---|
| 85103-White | $70.35 | 5 gal. |
| 85107-Yellow | $70.35 | 5 gal. |

PPG ALKYD TRAFFIC MARKING PAINT

| | | |
|---|---|---|
| 11-3 -White | $78.57 | 5 gal. |
| 11-4 -Yellow | $78.57 | 5 gal. |

If you have any questions please feel free to contact me at 252-9660.

Thank You,

Martha Estes

Martha Estes

swarco
P.O. BOX 89
COLUMBIA, TN 38402 0089
931 • 388-5900
FAX 931 • 388-4039

February 18, 1998

City of Beckley
P.O. Drawer AJ
Beckley, West Virginia 25802

Re: Bid Opening February 24, 1998

Gentlemen:

We are pleased to bid on your requirements for use by the Department of Public Works as follows:

| | | |
|---|---|---|
| A. | DRAINAGE PIPE | No Bid |
| B. | ASPHALT | No Bid |
| C. | STONE | No Bid |
| D. | CONCRETE | No Bid |
| E. | RIVER SAND | No Bid |
| F. | #9 ABRASIVES | No Bid |
| G. | REINFORCEMENT RODS | No Bid |
| H. | PAINT | No Bid |
| I. | SIGN MATERIAL | No Bid |
| J. | TAPE | |
| | 1 roll each 24x50 yards reflective sheeting pressure-sensitive (black) | No Bid |
| | 1 roll each 24x 50 yards/heat activated sheeting (white, green, blue, red) | No Bid |
| | 40 rolls 4" x 50 yards traffic tape - white<br>Bidding: Director 60 | $105.00 per roll |
| | 26 rolls 4" x 50 yards traffic tape - yellow<br>Bidding: Director 60 | $105.00 per roll |
| | 26 rolls - 6" x 60 yards traffic tape - white<br>Bidding: Director 60 | $157.50 per roll |
| | 5 5-gallons traffic glue<br>Bidding: DPE-4 Primer Sealer | $90.00 per 5-gallon can |

We appreciate this opportunity to quote you and look forward to supplying your future requirements. If you have any questions, please do not hesitate to contact us.

Sincerely,

Gary C. Ware
Vice President

GCW/djw

**BANKS-MILLER SUPPLY COMPANY**
500 Industrial Drive
Beckley, WV 25801
Phone (304) 255-1416
Fax (304) 255-6799

**QUOTE**

Page 1

| Date |
|---|
| 2/24/98 |

| Quote # |
|---|
| 03/002867 |

d To CITY OF BECKLEY
P.O. DRAWER AJ
BECKLEY, WV 25801

Ship To DEPT OF PUBLIC WORKS

| Quantity | Stock # | Description | Unit Price | UM | Extended Price |
|---|---|---|---|---|---|
| | | ********** | | | |
| | | THESE PRICES BELOW ARE BASED ON TRUCKLOAD QUANITIES. | | | |
| | | ********** | | | |
| 0 | 91-002867005 | 12" 14GA. ALUMINIZED CULVERT PIPE | 5.8300 | FT | 0.00 |
| 0 | 91-002867006 | 15" 14GA. ALUMINIZED CULVERT PIPE | 7.2100 | FT | 0.00 |
| 0 | 91-002867007 | 18" 14GA. ALUMINIZED CULVERT PIPE | 8.6900 | FT | 0.00 |
| 0 | 91-002867008 | 24" 14GA. ALUMINIZED CULVERT PIPE | 11.6200 | FT | 0.00 |
| 0 | 91-002867009 | 30" 14GA. ALUMINIZED CULVERT PIPE | 14.7000 | FT | 0.00 |
| 0 | 91-002867010 | 36" 14GA. ALUMINIZED CULVERT PIPE | 17.9900 | FT | 0.00 |
| 0 | 91-002867011 | 48" 14GA. ALUMINIZED CULVERT PIPE | 23.9100 | FT | 0.00 |
| 0 | 91-002867012 | 60" 14GA. ALUMINIZED CULVERT PIPE | 36.7200 | FT | 0.00 |
| | | NOTE:5X1 CORRUGATION ON THIS ITEM. | | | |
| 0 | 91-002867014 | 12" ALUMINIZED BANDS 14 GUAGE | 5.8300 | EA | 0.00 |
| 0 | 91-002867015 | 15" ALUMINIZED BANDS 14 GUAGE | 7.2100 | EA | 0.00 |
| 0 | 91-002867016 | 18" ALUMINIZED BANDS 14 GUAGE | 8.6900 | EA | 0.00 |
| 0 | 91-002867017 | 24" ALUMINIZED BANDS 14 GUAGE | 11.6200 | EA | 0.00 |
| 0 | 91-002867018 | 30" ALUMINIZED BANDS 14 GUAGE | 14.7000 | EA | 0.00 |
| 0 | 91-002867019 | 36" ALUMINIZED BANDS 14 GUAGE | 17.9900 | EA | 0.00 |
| 0 | 91-002867020 | 48" ALUMINIZED BANDS 14 GUAGE | 23.9100 | EA | 0.00 |
| 0 | 91-002867021 | 60" ALUMINIZED BANDS 14 GUAGE | 55.0900 | EA | 0.00 |
| | | ********** | | | |
| | | THESE PRICES BELOW ARE BASED ON OUR STOCK PRICES. | | | |
| | | ********** | | | |
| 0 | 91-002867026 | 12" 14GA. ALUMINIZED CULVERT PIPE | 6.1800 | FT | 0.00 |
| 0 | 91-002867027 | 15" 14GA. ALUMINIZED CULVERT PIPE | 7.6400 | FT | 0.00 |
| 0 | 91-002867028 | 18" 14GA. ALUMINIZED CULVERT PIPE | 9.2000 | FT | 0.00 |
| 0 | 91-002867029 | 24" 14GA. ALUMINIZED CULVERT PIPE | 12.3100 | FT | 0.00 |
| 0 | 91-002867030 | 30" 14GA. ALUMINIZED CULVERT PIPE | 15.5700 | FT | 0.00 |
| 0 | 91-002867031 | 36" 14GA. ALUMINIZED CULVERT PIPE | 19.0500 | FT | 0.00 |
| 0 | 91-002867032 | 48" 14GA. ALUMINIZED CULVERT PIPE | 25.3200 | FT | 0.00 |
| 0 | 91-002867033 | 60" 14GA. ALUMINIZED CULVERT PIPE | 38.8800 | FT | 0.00 |
| 0 | 91-002867034 | 12" ALUMINIZED BANDS 14 GUAGE | 6.1800 | EA | 0.00 |
| 0 | 91-002867035 | 15" ALUMINIZED BANDS 14 GUAGE | 7.6400 | EA | 0.00 |
| 0 | 91-002867036 | 18" ALUMINIZED BANDS 14 GUAGE | 9.2000 | EA | 0.00 |
| 0 | 91-002867037 | 24" ALUMINIZED BANDS 14 GUAGE | 12.3100 | EA | 0.00 |
| 0 | 91-002867038 | 30" ALUMINIZED BANDS 14 GUAGE | 15.5700 | EA | 0.00 |
| 0 | 91-002867039 | 36" ALUMINIZED BANDS 14 GUAGE | 19.0500 | EA | 0.00 |
| 0 | 91-002867040 | 48" ALUMINIZED BANDS 14 GUAGE | 25.3200 | EA | 0.00 |
| 0 | 91-002867041 | 60" ALUMINIZED BANDS 14 GUAGE | 58.3300 | EA | 0.00 |
| | | ********** | | | |
| | | THESE ARE PRICES ON GRADE 60 REBAR BASED ON OUR STOCK PRICES. | | | |
| | | ********** | | | |
| 0 | 2000-066000 | REBAR - GRADE 60 3/8"-#3X20' -10MM | .2700 | LB | 0.00 |
| 0 | 2000-066100 | REBAR - GRADE 60 1/2"-#4X20' 13MM | .2250 | LB | 0.00 |
| 0 | 2000-066200 | REBAR - GRADE 60 5/8"-#5X20'-16MM | .2215 | LB | 0.00 |
| 0 | 2000-066300 | REBAR - GRADE 60 3/4"-#6X20'-19MM | .2160 | LB | 0.00 |
| 0 | 2000-066400 | REBAR - GRADE 60 7/8"-#7X20'-22MM | .2140 | LB | 0.00 |
| 0 | 2000-066500 | REBAR - GRADE 60 1"-#8X20'- 25MM | .2100 | LB | 0.00 |

TERMS: Net 30 Days
FOB: Point of Destination
TAXES: If Applicable
Prices are valid for 30 days

This acceptance is in accordance with the terms and conditions of Banks-Miller Supply Company.

By _____ Date _____

| | |
|---|---|
| Freight | |
| Sales Tax | |
| Quote Total | |

NEWMAN TRAFFIC SIGNS

Shipping Address
1606 6th Ave. S.W.
Jamestown, ND 58401

Mailing Address
P.O. Box 1728
Jamestown, ND 58402-1728

NATIONWIDE WATS 1-800-437-9770
FAX 701-252-9213

Quote ✓
Order
P.O. #

Customer: City of Buckley

Delivery Address:

Phone # Fax #

Date 2/20/98 Placed By

| Quantity | Size | Gauge | Sheeting | Part Number | Message | Color | Unit | Extended Price |
|---|---|---|---|---|---|---|---|---|
| 25 | | | | | 90° Cross Brackets | | 4.40 | 110.00 |
| 25 | | | | | 45° Cross Brackets | | 4.40 | 110.00 |
| 50 per box | | | | | Straight leg brackets D001 | | 138.99 | 138.99 |
| 20 | 36x12 | | | | Flat blanks | | 5.40 | 108.00 |
| 25 | 10'2# | | | | "U Channel Sign Post | | no Bid | |
| 200' | | | | | 3/4" Banding C163 | | 100.13 | 100.13 |
| 26 | | | | | Post Cap for round posts | | 4.40 | 114.40 |
| 25 | 3630 | | Eg | R1-1 | Stop face heat act | | 7.50 | 187.50 |
| 10 | 3636 | | Eg | R1-1 | Stop face heat act. | | 10.35 | 103.50 |
| 40 | 2424 | | Eg | R1-1 | Stop face heat act. | | 5.20 | 208.00 |
| 1 roll | | | Eg | $1.10/sq ft | 24"x50 yd Black Sheeting DS | Black | 330.00 | 330.00 |
| 1 roll | | | Eg | $1.05/sq ft | " " Heat activated Sheeting | White | 315.00 | 315.00 |
| 1 roll | | | Eg | $1.05/sq ft | " " " " " | Green | 315.00 | 315.00 |
| 1 roll | | | Eg | $1.05/sq ft | " " " " " | Blue | 315.00 | 315.00 |
| 1 roll | | | Eg | $1.05/sq ft | " " " " " | red | 315.00 | 315.00 |
| 40 | 4"x5yd | | | | "3M" Pavement tape | White | 171.00 | 6840.00 |
| 26 | 4"x5yd | | | | "3M" Pavement tape | yellow | 231.00 | 6006.00 |
| 26 | 6"x50yd | | | | "3M" Pavement tape | White | 225.00 | 5850.00 |
| 5 | gallons | | | | Primer 5 gallon | | | |

Beckley, WV

| Quantity | | Price Each | Total |
|---|---|---|---|
| 25 | Cross 90 degree, HSI 990 | 3.31 | 82.75 |
| 25 | Cross 45 degree, HSI 457 | 3.32 | 83.00 |
| 25 | Straight Leg Bik, HSI M-5AA | 1.41 | 35.25 |
| 25 | 12x36, 0.080 | 5.07 | 126.75 |
| 50 | U chan, 3#, 10' | 17.00 | 850.00 |
| 51 | U chan, 2#, 10' | 11.30 | 576.30 |
| 200' | Banding strapping 3/4" SS | 65.70 | 65.70 |
| 50 | Alum post clamps for round 2", HSI Z238 | 2.99 | 149.50 |
| 50 | 30" Stop Decals, EG | 7.71 | 385.50 |
| 10 | 36" Stop Decals, EG | 11.07 | 110.70 |
| 50 | 24" Stop Decals, EG | 5.10 | 255.00 |

All or none
One time shipment
Prices are F.O.B. Destination

hallsigns
since 1949

FEBRUARY 19, 1998

CITY OF BECKLEY
ATTN: GARY SUTPHIN/ RECORDER-TREASURER
409 S KANAWHA ST
BECKLEY, WV 25802

**BID:** SIGN MATERIAL - CATEGORY I

**OPENS:** 2/24/98 7:30 PM

**FOB:** DELIVERED

**TERMS:** NET 30 0% DISCOUNT

**SHIPMENT:** 21-35 DAYS ARO

**QUOTING:** BRACKETS
ALUMINUM BLANKS - AS SPECIFIED
POSTS - QUOTED 10' 3# GREEN AND 10'2# GREEN U CHANNELS
BANDING STRAPPING - AS SPECIFIED
SIGN FACES - ENGINEER GRADE/ HEAT ACTIVATED OR PRESSURE

**MINIMUMS:** ALL OR NONE - A ONE TIME SHIPMENT.

Please note: Our freight carriers do not carry equipment to unload at your dock. Prices are for delivery to your dock only. If you have any questions or wish to place an order please call Christina Miller at Ext. 106 at 800-284-7446.

Thank you,

Christina Miller

Christina Miller
Bid Coordinator

traffic • custom • materials
Hall Signs, Incorporated
4495 West Vernal Pike, P.O. Box 515, Bloomington, Indiana 47404
(812) 332-9355 voice • (800) 284-7446 toll free • (812) 332-9816 fax

3M

**Series 2200 With Heat Activated Adhesive**
**Series 3200 With Pressure Sensitve Adhesive**
**Series 5200 With High Tack Pressure Sensitive Adhesive**
Durable, retroreflective enclosed lens sheetings designed for the production of traffic control devices. They may be screen processed using Series 700 process colors; see Policies Guide for ordering information.

1484/CW-84 Orange (See Section D)

| | | |
|---|---|---|
| 2271 Yellow | 3271 Yellow | |
| 2272 Red | 3272 Red | |
| 2276 Blue | 3275 Blue | |
| 2277 Green | 3277 Green | |
| 2279 Brown | 3279 Brown | |
| 2284 Orange | 3290 White | 5271 Yellow |
| 2290 White | 3290 Wht Pkwy | 5290 White |
| 2290 White Pkwy | | |

| Size | Net Price Per Roll | Net Price Per Roll |
|---|---|---|
| 24" x 10yds | 51.00 | N/A |
| 3/8" x 50 yds* | 3.98 | N/A |
| 1/2" x 50 yds* | 5.31 | N/A |
| 5/8" x 50 yds* | 6.64 | N/A |
| 3/4" x 50 yds* | 7.97 | N/A |
| 1" x 50 yds* | 10.63 | N/A |
| 1 1/4" x 50 yds* | 13.28 | N/A |
| 2" x 50 yds* | 21.25 | N/A |
| 3" x 50 yds* | 31.88 | N/A |
| 6" x 50yds | 63.75 | 130.14 |
| 8" x 50yds | 85.00 | N/A |
| 9" x 50 yds | 95.63 | N/A |
| 12" x 50yds | 127.50 | 260.28 |
| 12 3/4" x 50 yds* | 135.47 | N/A |
| 18" x 50yds | 191.25 | 390.42 |
| 24" x 50 yds | 255.00 | 520.56 |
| 30" x 50yds | 318.75 | 650.70 |
| 36" x 50yds | 382.50 | 780.84 |
| 42" x 50yds | 446.25 | 910.98 |
| 48" x 50yds | 510.00 | 1041.12 |

* Available in 2290/3290 White Parkway only.
**Available in 3271 Yellow, 3276 Blue, 3277 Green. SO Items are available on a special quotation basis only.

**"SCOTCHLITE" Brand Engineer Grade Work Zone Sheeting**
**Series 1480**
**Series CW84**

Enclosed lens reflective sheetings designed for the production of traffic control devices used in work zones.
Sign Sheeting with Super High Tack Pressure Sensitive Adhesive

| Size | Orange 1484/CW84 Net Price Per Roll |
|---|---|
| 4" x 50 yds | $ 42.50 |
| 5" x 50 yds | $ 53.13 |
| 6" x 50 yds | $ 63.75 |
| 7" x 50 yds | $ 74.38 |
| 8" x 50 yds | $ 85.00 |
| 9" x 50 yds | $ 95.63 |
| 10" x 50 yds | $ 106.25 |
| 11" x 50 yds | $ 116.88 |
| 12" x 50 yds | $ 127.50 |
| 18" x 50 yds | $ 191.25 |
| 24" x 50 yds | $ 255.00 |
| 30" x 50 yds | $ 318.75 |
| 36" x 50 yds | $ 382.50 |
| 42" x 50 yds | $ 446.25 |
| 48" x 50 yds | $ 510.00 |

## Sign Faces
## From Scotchlite™ Reflective Sheeting Engineer Grade

### Regulatory Series (Red Background)

| | | | | |
|---|---|---|---|---|
| R1-1 | STOP | 24" x 24" | 30" x 30" | 36" x 36" |
| R1-3 | 4-WAY | 12" x 6" | | |
| R1-2 | YIELD | 30" x 30" x 30" | 36" x 36" x 36" | |
| R5-1 | DO NOT ENTER | 30" x 30" | | |

| | | |
|---|---|---|
| 12" x 6" | $ 2.18 | $ 2.07 |
| 18" x 6" | 2.75 | 2.64 |
| 30" x 30" x 30" | 2.31 | 8.96 |
| 30" x 18" | 9.30 | 8.84 |
| 24" x 24" | 8.80 | 8.34 |
| 36" x 36" x 36" | 10.22 | 9.72 |
| 36" x 24" | 14.42 | 13.74 |
| 30" x 30" | 13.46 | 12.82 |
| 48" x 48" x 48" | 16.83 | 15.99 |
| 42" x 30" | 20.73 | 19.74 |
| 36" x 36" | 19.70 | 18.74 |
| 48" x 48" | 39.02 | 37.15 |

### Two Color Faces
Red and Black on White
Green and Blue on White

| | | |
|---|---|---|
| 12" x 12" | $ 2.95 | $ 2.80 |
| 12" x 18" | 4.46 | 4.28 |
| 12" x 24" | 5.51 | 5.24 |
| 18" x 18" | 6.39 | 6.09 |
| 12" x 30" | 6.96 | 6.62 |
| 18" x 24" | 8.03 | 7.65 |
| 24" x 24" | 10.86 | 10.33 |
| 24" x 30" | 12.89 | 12.24 |
| 30" x 30" | 15.57 | 14.81 |
| 36" x 36" | 21.19 | 20.16 |
| 48" x 48" | 37.33 | 35.54 |

### Three Color Faces
Black, White and Red on Yellow
Red, Green and Black on Yellow

| | | |
|---|---|---|
| 30" x 30" | $ 18.48 | $ 17.60 |
| 36" x 36" | 24.25 | 23.10 |
| 48" x 48" | 43.15 | 41.08 |

Faces must be ordered in minimum quantities of 16 identical.





02/24/98 13:02 TCM BID GRP 225-55-08 → 384 256 1967 NO.125 006

## One Color Sign Faces - Engineer Grade

### Regulatory Series (all others), Warning Series, School Series

Approved MUTCD (Manual on Uniform Traffic Control Devices) Faces, which are manufactured from Engineer Grade Sheeting, can be priced according to the following schedule. These faces are geometric in shape, one screened color, and are listed by code number or illustrated in the MUTCD Manual, which include no words or symbols which would render them unique or restricted in use to a given state.

| | | |
|---|---|---|
| 12" x 6" | $ 1.84 | $ 1.76 |
| 12" x 9" | 2.34 | 2.22 |
| 12" x 12" | 2.80 | 2.68 |
| 24" x 8" | 3.21 | 3.06 |
| 12" x 18" | 3.49 | 3.28 |
| 15" x 15" | 3.64 | 3.44 |
| 24" x 10" | 3.83 | 3.64 |
| 18" x 15" | 4.10 | 3.90 |
| 24" x 12" | 4.13 | 3.94 |
| 21" x 15" | 4.90 | 4.63 |
| 18" x 18" | 4.97 | 4.71 |
| 18" x 24" | 6.24 | 5.93 |
| 12" x 36" | 6.24 | 5.93 |
| 18" x 30" | 7.62 | 7.23 |
| 36" x 15" | 7.62 | 7.23 |
| 30" x 40" x 40" | 7.80 | 7.42 |
| 24" x 24" | 7.92 | 7.54 |
| 36" x 18" | 8.99 | 8.53 |
| 24" x 30" | 9.83 | 9.36 |
| 36" x 48" x 48" | 11.06 | 11.09 |
| 48" x 18" | 11.67 | 10.52 |
| 36" x 24" | 11.67 | 11.09 |
| 9" x 48" x 80" | 11.70 | 11.14 |
| 30" x 30" | 12.39 | 11.82 |
| 48" x 20" | 13.12 | 12.47 |
| 30" x 36" | 14.88 | 14.15 |
| 24" x 48" | 15.53 | 14.76 |
| 30" x 42" | 17.29 | 16.45 |
| 36" x 36" | 17.67 | 16.83 |
| 48" x 64" x 64" | 19.13 | 16.21 |
| 48" x 30" | 19.35 | 18.44 |
| 42" x 36" | 20.20 | 19.24 |
| 36" x 48" | 23.60 | 22.48 |
| 30" x 60" | 25.09 | 23.87 |
| 36" x 60" | 29.30 | 27.89 |
| 48" x 48" | 31.25 | 29.76 |
| 36" x 66" | 32.90 | 31.29 |
| 42" x 60" | 34.54 | 32.86 |
| 36" x 72" | 35.39 | 33.70 |
| 48" x 60" | 38.83 | 36.95 |
| 72" x 48" | 45.59 | 43.42 |
| 78" x 48" | 49.00 | 46.63 |
| 84" x 48" | 52.37 | 49.84 |
| 48" x 96" | 59.21 | 56.38 |

Faces must be ordered in minimum quantities of 10 identical.

## Sign Faces
## From Scotchlite™ Reflective Sheeting High Intensity Grade

### Regulatory Series (Red Background)

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| HIR1-1 | HI3R1-1 | S-5HIR1-1 | STOP | 24" x 24" | 30" x 30" | 36" x 36" | 48" x 48" |
| HIR1-2 | HI3R1-2 | S-5HIR1-2 | YIELD | 30" x 30" x 30" | 36" x 36" x 36" | 48" x 48" x 48" | |
| HIR1-3 | HI3R1-3 | S-5HIR1-3 | 4-WAY | 12" x 6" | | | |
| HIR1-4 | HI3R1-4 | S-5HIR1-4 | ALL WAY | 18" x 6" | | | |
| HIR5-1 | HI3R5-1 | S-5HIR5-1 | DO NOT ENTER | 30" x 30" | 36" x 36" | 48" x 48" | |
| HIR5-1a | HI3R5-1a | S-5HIR5-1a | WRONG WAY | 30" x 18" | 36" x 24" | 42" x 30" | |

| | | | |
|---|---|---|---|
| 12" x 6" | $ 4.23 | $ 4.01 | $ 4.73 |
| 18" x 6" | 5.31 | 5.09 | 6.03 |
| 30" x 30" x 30" | 15.75 | 14.99 | 18.18 |
| 24" x 24" | 20.75 | 19.76 | 24.17 |
| 30" x 18" | 21.47 | 20.43 | 24.75 |
| 36" x 36" x 36" | 22.41 | 21.33 | 25.88 |
| 30" x 30" | 31.86 | 30.33 | 36.39 |
| 36" x 24" | 33.08 | 31.50 | 38.30 |
| 48" x 48" x 48" | 39.38 | 37.49 | N/A |
| 36" x 36" | 46.40 | 44.19 | 54.05 |
| 42" x 30" | 47.79 | 45.50 | 55.44 |
| 48" x 48" | 97.08 | 92.89 | N/A |

Faces must be ordered in minimum quantities of 10 identical.

## Two Color Faces - High Intensity Grade

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| HIR3-1 | HI3R3-1 | S-5HIR3-1 | NO RIGHT TURN SYMBOL * | 24" x 24" | 30" x 30" | 36" x 36" | 48" x 48" |
| HIR3-2 | HI3R3-2 | S-5HIR3-2 | NO LEFT TURN SYMBOL * | 24" x 24" | 30" x 30" | 36" x 36" | 48" x 48" |
| HIR3-4 | HI3R3-4 | S-5HIR3-4 | NO U-TURN SYMBOL * | 24" x 24" | 30" x 30" | 36" x 36" | 48" x 48" |
| HIR5-2 | HI3R5-2 | S-5HIR5-2 | NO TRUCKS SYMBOL * | 24" x 24" | 30" x 30" | 36" x 36" | 48" x 48" |
| HIR5-6 | HI3R5-6 | S-5HIR5-6 | NO BICYCLES SYMBOL | 24" x 24" | 30" x 30" | 36" x 36" | 48" x 48" |
| HIR7-2a | HI3R7-2a | S-5HIR7-2a | NO PARKING SYMBOL * with times | 12" x 18" | | | |
| HIR7-8 | HI3R7-8 | S-5HIR7-8 | "RESERVED PARKING" with handicapped symbol * * | 12" x 18" | | | |
| HIR7-9a | HI3R7-9a | S-5HIR7-9a | NO PARKING SYMBOL "BIKE LANE" | 12" x 18" | | | |
| HIR7-107a | HI3R7-107a | S-5HIR7-107a | NO PARKING AND BUS SYMBOL * | 12" x 30" | | | |
| HIR8-3a | HI3R8-3a | S-5HIR8-3a | NO PARKING SYMBOL * | 12" x 12" | 24" x 24" | 36" x 36" | 48" x 48" |
| HIR9-3a | HI3R9-3a | S-5HIR9-3a | NO PEDESTRIAN CROSSING SYMBOL * | 18" x 18" | 24" x 24" | 30" x 30" | |
| HIR9-4a | HI3R9-4a | S-5HIR9-4a | NO HITCH HIKING SYMBOL * | 18" x 18" | 24" x 24" | | |
| HIM1-5 | HI3M1-5 | S-5HIM1-5 | "COUNTY" ROUTE MARKER BLANK * * * | 18" x 18" | 24" x 24" | 30" x 30" | |

* Two color: Red and Black on White
** Two color: Green and Blue on White
*** Two color: Blue and Yellow

| | | | |
|---|---|---|---|
| 12" x 12" | $ 6.21 | $ 5.90 | $ 7.11 |
| 12" x 18" | 9.41 | 8.96 | 10.76 |
| 12" x 24" | 11.97 | 11.39 | 13.86 |
| 18" x 18" | 13.77 | 13.10 | 15.84 |
| 12" x 30" | 14.84 | 14.22 | 17.19 |
| 18" x 24" | 17.61 | 16.85 | 20.12 |
| 24" x 24" | 23.72 | 22.59 | 27.36 |
| 24" x 30" | 28.49 | 27.14 | 32.99 |
| 30" x 30" | 34.38 | 32.72 | 39.83 |
| 36" x 36" | 48.51 | 46.17 | 56.34 |
| 48" x 48" | 84.24 | 80.19 | N/A |

## Three Color Faces - High Intensity Grade

| | | | | | | |
|---|---|---|---|---|---|---|
| HIW3-1a | HI3W3-1a | S-5HIW3-1a | STOP AHEAD SYMBOL * * * * | 30" x 30" | 36" x 36" | 48" x 48" |
| HIW3-3 | HI3W3-3 | S-5HIW3-3 | SIGNAL AHEAD SYMBOL * * * * * | 30" x 30" | 36" x 36" | 48" x 48" |
| HIW3-2a | HI3W3-2a | S-5HIW3-2a | YIELD AHEAD SYMBOL * * * * | 30" x 30" | 36" x 36" | 48" x 48" |

**** Three color: Black, White and Red on Yellow
***** Three color: Red, Green and Black on Yellow

| | | | |
|---|---|---|---|
| 30" x 30" | $ 37.71 | $ 35.81 | $ 43.34 |
| 36" x 36" | 52.02 | 49.50 | 60.03 |
| 48" x 48" | 90.81 | 86.40 | N/A |



3M

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## One-Color Faces - High Intensity Grade

**Regulatory (all others), Warning, School, Construction, Trailblazer Series**

Approved MUTCD (Manual on Uniform Traffic Control Devices) Faces, which are manufactured from High Intensity Grade Sheeting, can be priced according to the following schedule. These faces are geometric in shape, one screened color, and are listed by code number or illustrated in the MUTCD, which include no words or symbols which would render them unique or restricted in use to a given state

| | | | |
|---|---|---|---|
| 12" x 6" | $ 3.83 | $ 3.65 | $ 4.37 |
| 12" x 9" | 4.86 | 4.64 | 5.63 |
| 12" x 12" | 6.03 | 5.72 | 6.93 |
| 24" x 6" | 7.52 | 7.16 | 8.73 |
| 12" x 18" | 8.28 | 7.86 | 9.54 |
| 15" x 15" | 8.46 | 8.06 | 9.81 |
| 24" x 10" | 8.96 | 8.51 | 10.40 |
| 18" x 15" | 9.90 | 9.45 | 11.43 |
| 24" x 12" | 10.44 | 9.90 | 12.24 |
| 21" x 15" | 11.84 | 11.25 | 13.73 |
| 18" x 18" | 12.15 | 11.57 | 14.09 |
| 18" x 24" | 15.57 | 14.81 | 18.09 |
| 12" x 36" | 15.57 | 14.81 | 18.09 |
| 18" x 30" | 19.35 | 18.45 | 22.55 |
| 36" x 15" | 19.35 | 18.45 | 22.55 |
| 30" x 40" x 40" | 20.07 | 19.08 | 23.40 |
| 24" x 24" | 20.52 | 19.53 | 23.85 |
| 36" x 18" | 22.95 | 21.83 | 26.69 |
| 24" x 30" | 25.11 | 23.90 | 29.30 |
| 48" x 18" 28.26 | 29.70 | 28.26 | NA |
| 36" x 48" x 48" | 27.90 | 26.55 | 32.49 |
| 36" x 24" | 29.70 | 28.26 | 34.70 |
| 9" x 48" x 90" | 29.84 | 28.40 | 34.52 |
| 30" x 30" | 30.83 | 29.34 | 35.96 |
| 48" x 20" | 33.44 | 31.82 | N/A |
| 30" x 36" | 37.08 | 35.28 | 43.34 |
| 24" x 48" | 39.33 | 37.44 | 45.99 |
| 30" x 42" | 43.56 | 41.45 | 50.81 |
| 36" x 36" | 44.80 | 42.48 | 52.11 |
| 48" x 64" x 64" | 46.40 | 44.19 | N/A |
| 48" x 30" | 50.04 | 47.61 | 58.46 |
| 42" x 36" | 52.85 | 50.13 | 61.47 |
| 36" x 48" | 59.31 | 56.43 | 69.21 |
| 30" x 60" | 62.01 | 59.04 | 72.45 |
| 36" x 60" | 72.95 | 69.44 | 85.48 |
| 48" x 48" | 77.49 | 73.76 | N/A |
| 36" x 66" | 79.65 | 75.78 | 93.29 |
| 42" x 60" | 84.02 | 79.97 | NA |
| 36" x 72" | 86.22 | 82.04 | 101.03 |
| 48" x 60" | 94.95 | 90.41 | N/A |
| 72" x 48" | 112.50 | 107.10 | N/A |
| 78" x 48" | 121.32 | 115.47 | N/A |
| 84" x 48" | 130.19 | 123.89 | N/A |
| 48" x 96" | 147.65 | 140.54 | N/A |

Faces must be ordered in minimum quantities of 10 identical.

## Sign Faces
## From Scotchlite™ Reflective Sheeting Diamond Grade

**Regulatory Series (Red Background)**

| | | | | | |
|---|---|---|---|---|---|
| DG3 R1-1 | STOP | 24" x 24" | 30" x 30" | 36" x 36" | 48" x 48" |
| DG3 R1-2 | YIELD | 30" x 30" x 30" | 36" x 36" x 36" | 48" x 48" x 48" | |
| DG3 R1-3 | 4-WAY | 12" x 6" | | | |
| DG3 R1-4 | ALL WAY | 18" x 6" | | | |
| DG3 R5-1 | DO NOT ENTER | 30" x 30" | 36" x 36" | 48" x 48" | |
| DG3 R5-1a | WRONG WAY | 30" x 18" | 36" x 24" | 42" x 30" | |

| | | |
|---|---|---|
| 12" x 6" | $ 4.14 | $ 4.14 |
| 18" x 6" | 5.36 | 5.36 |
| 30" x 30" x 30" | 17.19 | 17.19 |
| 30" x 18" | 22.85 | 22.85 |
| 24" x 24" | 23.04 | 23.04 |
| 36" x 36" x 36" | 24.17 | 24.17 |
| 36" x 24" | 35.69 | 35.69 |
| 30" x 30" | 34.81 | 34.81 |
| 48" x 48" x 48" | 41.58 | 41.58 |
| 42" x 30" | 49.46 | 49.46 |
| 36" x 36" | 49.91 | 49.91 |
| 48" x 48" | 92.03 | 92.03 |

Faces must be ordered in minimum of 10 identical. Yields and widths over 36" will have splices.

## Two Color Faces - Diamond Grade Sheeting

| | | | | | |
|---|---|---|---|---|---|
| DG3R3-1 | "NO RIGHT TURN SYMBOL " | 24" x 24" | 30" x 30" | 36" x 36" | 48" x 48" |
| DG3R3-2 | NO LEFT TURN SYMBOL " | 24" x 24" | 30" x 30" | 36" x 36" | 48" x 48" |
| DG3R3-4 | NO U-TURN SYMBOL " | 24" x 24" | 30" x 30" | 36" x 36" | 48" x 48" |
| DG3R5-2 | NO TRUCKS SYMBOL " | 24" x 24" | 30" x 30" | 36" x 36" | 48" x 48" |
| DG3R5-6 | NO BICYCLES SYMBOL " | 24" x 24" | 30" x 30" | 36" x 36" | 48" x 48" |
| DG3R7-2a | NO PARKING SYMBOL " with times | 12" x 18" | | | |
| DG3R7-8 | "RESERVED PARKING" with Handicapped symbol "" | 12" x 18" | | | |
| DG3R7-9a | NO PARKING SYMBOL "BIKE LANE" " | 12" x 18" | | | |
| DG3R7-10a | NO PARKING AND BUS SYMBOL " | 12" x 30" | | | |
| DG3R8-3a | NO PARKING SYMBOL " | 12" x 12" | 24" x 24" | 36" x 36" | 48" x 48" |
| DG3R9-3a | NO PEDESTRIAN CROSSING SYMBOL " | 18" x 18" | 24" x 24" | 30" x 30" | |
| DG3R9-4a | NO HITCH HIKING SYMBOL " | 18" x 18" | 24" x 24" | | |
| DG3M1-5 | "COUNTY" ROUTE MARKER BLANK """ | 18" x 18" | 24" x 24" | 30" x 30" | |

" Two Color: Red and Black on White.
"" Two Color: Green and Blue on White.
""" Two Color: Blue and Yellow.

| | | |
|---|---|---|
| 12" x 12" | $ 6.48 | $ 6.48 |
| 12" x 18" | 9.77 | 9.77 |
| 12" x 24" | 12.51 | 12.51 |
| 18" x 18" | 14.36 | 14.36 |
| 12" x 30" | 15.57 | 15.57 |
| 18" x 24" | 18.32 | 18.32 |
| 24" x 24" | 24.80 | 24.80 |
| 24" x 30" | 29.93 | 29.93 |
| 30" x 30" | 36.41 | 36.41 |
| 36" x 36" | 51.21 | 51.21 |
| 48" x 48" | 94.66 | 94.66 |

Faces must be ordered in minimum quantities of 10 identical.
Widths over 3[illegible] inches will have splices.

## Three Color Faces - Diamond Grade Sheeting

| | | | | |
|---|---|---|---|---|
| DG3W3-1a | STOP AHEAD SYMBOL """ | 30" x 30" | 36" x 36" | 48" x 48" |
| DG3W3-2a | YIELD AHEAD SYMBOL """ | 30" x 30" | 36" x 36" | 48" x 48" |
| DG3W3-3 | SIGNAL AHEAD SYMBOL """" | 30" x 30" | 36" x 36" | 48" x 48" |

""" Three Color: Black, White and Red on Yellow
"""" Three Color: Red, Green and Black on Yellow

| | | |
|---|---|---|
| 30" x 30" | $ 42.12 | $ 42.12 |
| 36" x 36" | 58.70 | 58.70 |
| 48" x 48" | 104.27 | 104.27 |

Faces must be ordered in minimum quantities of 10 identical.
Widths over 3[illegible] inches will have splices.



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## One Color Faces - Diamond Grade Sheeting

### Regulatory Series (all others), Warning Series, School Series

Approved MUTCD (Manual on Uniform Traffic Control Devices) Faces, which are manufactured from Diamond Grade Sheeting 3971/3990 White and 3971/3991 Yellow, can be priced according to the following schedule. These faces are geometric in shape, one screened color, and are listed by code number or illustrated in the MUTCD Manual, which include no words or symbols which would render them unique or restricted in use to a given state.

| | | |
|---|---|---|
| 12" x 6" | $ 3.74 | $ 3.74 |
| 12" x 9" | 5.04 | 5.04 |
| 12" x 12" | 6.26 | 6.26 |
| 24" x 6" | 7.92 | 7.92 |
| 12" x 18" | 8.69 | 8.69 |
| 15" x 15" | 8.91 | 8.91 |
| 24" x 10" | 9.45 | 9.45 |
| 18" x 15" | 10.49 | 10.49 |
| 24" x 12" | 11.03 | 11.03 |
| 21" x 15" | 12.47 | 12.47 |
| 18" x 18" | 12.78 | 12.78 |
| 18" x 24" | 16.43 | 16.43 |
| 12" x 36" | 16.43 | 16.43 |
| 18" x 30" | 20.52 | 20.52 |
| 36" x 15" | 20.52 | 20.52 |
| 30" x 40" x 40" | 21.20 | 21.20 |
| 24" x 24" | 21.69 | 21.69 |
| 24" x 24" */** | 23.87 | 21.69 |
| 36" x 18" | 24.26 | 24.26 |
| 24" x 30" | 26.69 | 26.69 |
| 36" x 48" x 48" | 29.57 | 29.57 |
| 36" x 24" | 31.66 | 31.66 |
| 9" x 48" x 90° | 31.77 | 31.77 |
| 30" x 30" | 32.94 | 32.94 |
| 30" x 30" */** | 36.97 | 32.94 |
| 30" x 36" | 39.65 | 39.65 |
| 24" x 48" | 42.08 | 42.08 |
| 48" x 24" | 43.47 | 42.08 |
| 30" x 42" | 46.35 | 46.35 |
| 36" x 36" | 47.61 | 47.61 |
| 36" x 36" */** | 53.69 | 47.61 |
| 48" x 84" x 84" | 59.18 | 59.18 |
| 36" x 48" | 63.27 | 63.27 |
| 48" x 48" | 88.11 | 88.11 |
| 48" x 60" | 105.12 | 105.12 |

Faces must be ordered in minimum quantities of 10 identical.
No passing zone, diamond shaped faces and widths over 36 inches will have splices.
*Regulatory
**Warning/School

### Stamark™ E-44 Contact Cement

| | |
|---|---|
| 5 Gallon Container (Cannot be air-shipped) | $ 140.85 |
| 1 Gallon Container (Air-shippable) | 38.07 |

75 Sq. Ft. Per Gallon Coverage For Adhesive Coated And 35 Sq. Ft. For Non-adhesive.
For use with Stamark™ Tapes Series 380, 420, 8710 & 8780.

### Stamark™ Sprayable Adhesive SP-44

| | |
|---|---|
| 5 Gallon Container (Cannot be Air-shipped) | $ 140.85 |
| 1 Gallon Container (Air-shippable) | 38.07 |

Coverage of SP-44 is approximately 360 lineal feet per gallon.
To be used for long line applications only. Need Spray Nozzle #SP-3; Nozzle & Piping #SP-7 (Recommended Nozzle & Piping: SP-44 & P-40). Contact Sales Representative for further information.
For use with Stamark™ Tapes Series 320, 380 & 8730.

### Scotch-Lane™ Pavement Preparation Adhesive P-40

Scotch-Lane™ P-40 Pavement Preparation Adhesive is for use with temporary and removable pavement marking tapes only and should be used full strength. Dilution is not recommended.

| | |
|---|---|
| 1 Gallon Container (Air-shippable) | $ 19.53 |
| 5 Gallon Container (Cannot be Air-shipped) | 75.15 |

Coverage of P-40 is approximately 225 square feet per gallon for legends and symbols.
When P-40 is applied with 3M's PS-14 Adhesive Spray Applicator, coverage is approximately 450 lineal feet per gallon.

## Stamark™ Tape
### *Series 330*

Series 330 tape is a highly reflective, lead-free, solventless foil tape designed for use as longitudinal markings in a free rolling, low encroachment traffic.

**12 Mil. Non-Lined Rolls**

| U.S. Customary Roll Size | Metric Roll Size | A330 White<br>A331 Yellow<br>Net Price Per Roll |
|---|---|---|
| 4" x 50 yds. | 100mm x 46m | $ 75.60 |
| 6" x 50 yds. | 150mm x 46m | 113.40 |
| 8" x 50 yds. | 200mm x 46m | 151.20 |
| 4" x 300 yds. | 100mm x 274m | 453.60 |
| 5" x 300 yds. | 127mm x 274m | 567.00 |
| 6" x 300 yds. | 150mm x 274m | 680.40 |

Stamark™ Sprayable adhesive SP-44 is recommended for all Series 330 applications.

## Scotchcal™ *Plus* and Scotchcal™ Film
### *Series 3650 With Controltac™ Adhesive*
### *Series 3690 With Pressure-Sensitive Adhesive*

E1

These films are durable, dimensionally stable, vinyl films for the production of vehicle marking emblems, markings, and striping.

| | 3650-10 White<br>3650-12 Black<br>3650-114 Transparent | 3650-13 Tomato Red<br>3650-14 Bright Orange<br>3650-15 Bright Yellow<br>3650-17 Vivid Blue<br>3650-23 Deep Red<br>3650-25 Sunflower<br>3650-27 Indigo<br>3650-120 Satin Aluminum<br>3650-131 Satin Gold | 3690 White<br>3690 Black | 3695 Black |
|---|---|---|---|---|
| 3/8" x 50 yds. | N/A | N/A | N/A | $ 3.78 |
| 9/16" x 50 yds. | N/A | N/A | N/A | 5.83 |
| 5/8" x 50 yds. | N/A | N/A | N/A | 6.26 |
| 3/4" x 50 yds. | N/A | N/A | N/A | 7.52 |
| 7/8" x 50 yds. | N/A | N/A | N/A | 8.73 |
| 1" x 50 yds. | 9.09 | 10.53 | 9.77 | 9.09 |
| 1 1/4" x 50 yds. | N/A | N/A | N/A | 11.39 |
| 2" x 50 yds. | 18.18 | 21.06 | 19.53 | 18.18 |
| 3" x 50 yds. | 27.27 | 31.59 | 29.30 | 27.27 |
| 4" x 50 yds. | 36.36 | 42.12 | 39.06 | 36.36 |
| 5" x 50 yds. | 45.45 | 52.65 | 48.83 | 45.45 |
| 6" x 50 yds. | 54.54 | 63.18 | 58.59 | 54.54 |
| 7" x 50 yds. | 63.63 | 73.71 | 68.36 | 63.63 |
| 8" x 50 yds. | 72.72 | 84.24 | 78.12 | 72.72 |
| 9" x 50 yds. | 81.81 | 94.77 | 87.89 | 81.81 |
| 10" x 50 yds. | 90.90 | 105.30 | 97.65 | 90.90 |
| 11" x 50 yds. | 99.99 | 115.83 | 107.42 | 99.99 |
| 12" x 50 yds. | 109.08 | 126.36 | 117.18 | 109.08 |
| 15" x 50 yds. | 136.35 | 157.95 | 146.48 | 136.35 |
| 18" x 50 yds. | 163.62 | 189.54 | 175.77 | 163.62 |
| 24" x 50 yds. | 197.64 | 228.96 | 212.76 | 197.64 |
| 30" x 50 yds. | 272.70 | 315.90 | 292.95 | 272.70 |
| 36" x 50 yds. | 327.24 | 379.08 | 319.04 | 327.24 |
| 48" x 50 yds. | 395.28 | 457.92 | 425.52 | 395.28 |

3M

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5730.XLS

Durable Pavement Marking Tapes and Related Items

## Stamark Tape

***Series 5730 and 6330***

Series 5730, 6330, and SMS-900 Pavement Marking Tapes are designed for use as legends and symbols, lane lines, edge lines, channelizing lines and gore marking.

Series 5730 Tapes, Series 6330 Sheeting which may be cut into legends and symbols, and Series SMS-900 precut words and symbols are durable, conformable and retroreflective.

Market and Product Policies. See Appendix A. Additional Product Information. See Appendix B.

**60 Mil. Non-Lined Standard Rolls**
**5730 White**
**5731 Yellow**

| U.S. Customary Roll Size | Metric Roll Size | Bulk Package Rolls Per Case | Std Package Rolls Per Case | Net Price Per Roll |
|---|---|---|---|---|
| 4" x 30 yds | 100mm x 27m | 30 | 3 | 63.00 |
| 6" x 30 yds | 150mm x 27m | 20 | 2 | 94.50 |
| 8" x 30 yds | 200mm x 27m | 10 | 1 | 126.00 |
| 12" x 30 yds | 300mm x 27m | 10 | 1 | 189.00 |
| 16" x 30 yds | 400mm x 27m | N/A | 1 | 252.00 |
| 24" x 30 yds | 600mm x 27m | N/A | 1 | 378.00 |
| 4" x 120 yds* | 100mm x 110m | 4 | 1 | 252.00 |
| 6" x 120 yds* | 150mm x 110m | 4 | 1 | 378.00 |

* If 120 yd. rolls are to be applied using the 3M Highway Tape Applicator (HTA-IV), contact St. Paul for quotation.

**60 Mil.Lined Standard Rolls**
**6330 White**
**6331 Yellow**

| U.S. Customary Roll Size | Metric Roll Size | Bulk Package Rolls Per Case | Std Package Rolls Per Case | Net Price Per Roll |
|---|---|---|---|---|
| 4" x 30 yds | 100mm x 27m | 30 | 3 | 119.52 |
| 12" x 30 yds | 300mm x 27m | 10 | 1 | 358.56 |
| 16" x 30 yds | 400mm x 27m | N/A | 1 | 478.08 |
| 24" x 30 yds. | 600mm x 27m | N/A | 1 | 717.12 |

Unless standard packaging is specified, all 60 Mil.material will be supplied in "Bulk Packaging" when order quantity is sufficient to warrant such packaging.

Continued on next page



02/24/98 13:10 TCM BID GRP 225-55-08 → 304 266 1767 NO.125 017

These bids will be reviewed by Councilmen-at-Large Rappold and Molloham, as well as Mr. Robinson and Mr. Sutphin, for award at a future meeting.

The Mayor also announced this as the date advertised for receipt of bids for the purchase of brochures for the Exhibition Mine. Affidavit of Publication is hereinafter incorporated:

# AFFIDAVIT OF PUBLICATION

## BECKLEY NEWSPAPERS INC.

### BECKLEY, WEST VIRGINIA 25801

February 13 19 98

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Jack L. Scott, being first duly sworn upon my oath, do depose and say that I am Director of Advertising 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 Notice to Bidders
(Description of notice)

was duly published in said newspaper once a week for Two successive weeks (Class II), commencing with the issue of the 6th day of February, 1998, and ending with the issue of the 13th day of February, 1998, and was posted at the

on the ____ day of ____; that said annexed notice was published on the following dates:

February 6 & 13, 1998 and that the cost of publishing said annexed notice aforesaid was $ 18.20

Signed: Jack L. Scott
Jack L. Scott
Director of Advertising
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this

13th day of February 19 98

My commission expires March 27, 2001

Notary Public of Raleigh County, West Virginia
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. SLONE
BECKLEY NEWSPAPERS
P.O. DRAWER A.J.
BECKLEY, WV 25801
My Commission Expires March 27, 2001

R/H

COPY OF PUBLICATION

NOTICE TO BIDDERS
The City of Beckley is accepting bids for the purchase of brochures to be used by the Exhibition Coal Mine. Quantities will be 100,000, 150,000, or 200,000. Complete specifications may be obtained from Randa Mahla, 304 256 1747.
Bids will be received until Tuesday, February 23, 1998, at which time they will be opened and read aloud. Bids must be submitted to the Recorder-Treasurer in sealed envelopes clearly marked to indicate contents. Bids may be hand delivered to 409 South Kanawha Street, or mailed to P.O. Drawer A.J., Beckley, West Virginia 25802-2832.
Gary R. Stephens
Recorder-Treasurer
2 13 Fri 2 RH

The Mayor opened and read the following bids:

BJW PRINTING & OFFICE SUPPLIES
P. O. BOX 1309 — 3100 ROBERT C. BYRD DRIVE — BECKLEY, WEST VIRGINIA 25802-1309
Telephone (304) 253-7361 — WV Toll Free 1-800-553-3184 — Fax (304) 253-7364

DATE 2/24/98

ATTN: Exhibition Mine
City of Beckley

## QUOTATION

We are pleased to quote on the following:

Exhibition Mine Brochure as outlined in Bid specifications.

| | |
|---|---|
| 100m | $8400.00 |
| 150m | $10,750.00 |
| 200m | $13,340.00 |

With Varnish b/s

| | |
|---|---|
| 100m | $8940.00 |
| 150m | $11,375.00 |
| 200m | $14,035.00 |

F.O.B. _____ Terms _____ Shipping Point _____

Estimated Shipping Weight _____ Time required to make shipment _____

We sincerely thank you for this opportunity and hope that we may be favored with your valued order.

BJW Printing and Office Supplies

By _____
Paul Fisher

The above quotation is based on cost of materials, labor, and conditions prevailing on above date. Therefore prices quoted herein may be subject to revision due to changes in prices affecting material, production or government regulations.

BJW Printing and Office Supplies Beckley WV 0 81274

# Central Printing Company

205 Central Avenue • Beckley, West Virginia 25801
304-252-5303 • WV 1-800-346-3304 • FAX 304-252-5310

2/23 1998

## QUOTATION

To City of Beckley Attn Gary Sutphin

We are pleased to quote on the following

Exhibition Coal Mine Brochures - 16x9 folds to 4x9, 80# enamel, process color both sides, 12 color separations, type-set, bleeds all sides

| | w/varnish | w/out varnish |
|---|---|---|
| 100,000 - | $7175.00 | $6410.00 |
| 150,000 - | $9690.00 | $8305.00 |
| 200,000 - | $11,015.00 | $10,180.00 |

F.O.B Terms Shipping Point

Estimated Shipping Weight Time required to make shipment

We sincerely thank you for this opportunity and hope that we may be favored with your valued order

CENTRAL PRINTING COMPANY

By Scott Fazio

This quotation includes all operations and materials to complete the work as specified above based on standard trade customs. Customer's copy and materials will be checked with the specifications. If changes are needed in the quotation we will notify you.
Customer's alterations are not included in this quotation. They will be charged additionally.
**This quotation is valid for 30 days.**

**PROGRESS PRESS, INC.**
2922 NICHOLAS AVENUE, N.E. • ROANOKE, VIRGINIA 24012 • 540-345-1820 • FAX 540-342-6526 • 1-800-533-4146

**Quotation to**

Exhibition Coal Mine
Brochure Bid
Drawer AJ
Beckley, WV 25801

Attn:Gary Sutphin
Recorder Treasurer
City of Beckley
Beckley, WV 25801

2/19/98

*Due before 2/24/98

**Quantities**
100M 150M 200M

**Description**
Exhibition Coal Mine Brochure (4 panel)

**Sizes -- bleeds**
16 x 9 flat size bleeds

**Stock -- Cover**
**Stock -- Inside**
80# Somerset Gloss text

**Material to be Supplied by Client**
Printer to set copy and do layout
12 transparencies

**Colors**
4/4,,4 color process option:flood varnish

**Separations -- I/T**
12 Separations (4 x 5 or less)

**Type of Proofs Required**
Blueline/Colorproof (digital)/Matchprint

**Folding -- Binding**
Roll fold to 4 x 9

**Packing and Distribution**
Paper band in 50's, carton pack to weigh not more than 40#

**Prices**

100M = $5,491.00
150M = $6,918.00
200M = $8,357.00

Add'l. to varnish
100M = $360.00
150M = $390.00
200M = $411.00

**Other Specifications**
Beckley, WV 25801 *Prices subject to paper availability

Your acceptance of this QUOTE constitutes ACCEPTANCE OF THE FOLLOWING CONTRACTUAL TERMS

Will 30 days OF FULL from date of invoice providing satisfactory credit has been established or unless previous financial arrangements in writing have been approved.

A 1 1/2% SERVICE CHARGE per month (18% annually) added to accounts past due 30 days from invoice date.

In addition, a fee of 25% of the total balance, plus court costs, in the event balance is sent to an attorney for collection.

Initial [ ] Art work and proofs, once approved by Progress Press, Inc. has an authorizing signature below as binding agreement and terms and conditions between us.

All quantities are based on the minimum size of paper and ink coverage. It is understood that any change in these specifications may be reflected in the price at time of shipment.

Any shipping and or handling rates are subject to increase upon receipt and examination of furnished material and/or film.

All prices quoted F.O.B. Roanoke unless otherwise specified.

The printer's liability is limited to the quoted amount of job estimated and produced.

Over runs or under runs due to excess 10% on quantities ordered up to 10,000 copies and on any overage agreed upon over or under quantities ordered above 10,000 copies shall constitute acceptable delivery. Printer will not be held responsible for shortages within the tolerance. If customer requires guaranteed "no less than" delivery, percentage tolerance of overage must be declared.

Printer will hold customer's film for a period of 2 years or return at customer's request.

Proofs shall be submitted with original copy. Corrections are to be made on "master set", returned marked "OK" or "OK with corrections" and signed by customer. If revised proofs are desired, should be made when proofs are returned. Printer requires any errors that may occur through printer's negligence be called to his attention within 5 days after receipt of finished product. Changes are communicated verbally. Printer shall not be responsible for errors if the customer has not supplied or has refused to accept or has failed to inform printer with a specific of changes or has exhibited proofer to proceed without submission of proofs.

By _____ Date
Authorized Signature & Title

PROGRESS PRESS, INC
By Owen Davidson
Owen Davidson 2/19/98

**PROGRESS PRESS, INC.**
2922 NICHOLAS AVENUE, N.E. • ROANOKE, VIRGINIA 24012 • 540 345 1820 • FAX 540 342 6526 • 1 800 533 4148

| | |
|---|---|
| *Quotation to* | Exhibition Coal Mine<br>Brochure Bid<br>Drawer AJ<br>Beckley, WV 25801<br><br>Attn:Gary Sutphin<br>Recorder Treasurer<br>City of Beckley<br>Beckley, WV 25801<br><br>2/19/98<br>*Due before 2/24/98 |
| *Quantities* | 100M 150M 200M |
| *Description* | Exhibition Coal Mine Brochure (4 panel) |
| *Sizes -- bleeds* | 16 x 9 flat size bleeds |
| *Stock -- Cover*<br>*Stock -- Inside* | 80# Somerset Gloss text |
| *Material to be Supplied by Client* | Printer to set copy and do layout<br>12 transparencies |
| *Colors* | 4/4;,4 color process option:flood varnish |
| *Separations -- I/T* | 12 Separations (4 x 5 or less) |
| *Type of Proofs Required* | Blueline/Colorproof (digital)/Matchprint |
| *Folding -- Binding* | Roll fold to 4 x 9 |
| *Packing and Distribution* | Paper band in 50's, carton pack to weigh not more than 40# |
| *Prices* | 100M = $5,491.00<br>150M = $6,918.00<br>200M = $8,357.00<br><br>Add'l. to varnish<br>100M = $360.00<br>150M = $390.00<br>200M = $411.00 |
| *Other Specifications* | Beckley, WV 25801 *Prices subject to paper availability |

Your acceptance of this QUOTE constitutes ACCEPTANCE OF THE FOLLOWING CONTRACTUAL TERMS

Net 30 days IN FULL from date of invoice providing satisfactory credit has been established or unless previous financial arrangements in writing have been agreed to.

A 1 1/2% SERVICE CHARGE per month (18% annually) will be added on accounts past due. No days from invoice date.

In any suit for 75% of the unpaid balance, plus court costs or any actual damage sued on our attorney fee shall be added.

WORK: No work will be performed until the Progress Press, Inc. has an authorized signature below as acting agent and terms aforementioned herewith.

All quotations are based on the present cost of paper and other materials. It is understood that any change in these costs may be reflected in the price at time of shipment.

Any incoming postage mailing will be subject to increase upon receipt and examination of finished material specified.

All goods quoted F.O.B. Roanoke unless otherwise specified.

The printer's liability is limited to the gross net amount of job estimated and produced.

Over runs or short runs not to exceed 10% on quantities ordered up to 10,000 copies, and/or the percentage agreed upon over or under quantities ordered above 10,000 copies shall constitute acceptance of delivery. Printer will bill for actual quantity delivered within this tolerance. If customer requires delivery to be less than, or more, percentage tolerance of overage must be included.

Printer will hold negatives & film for a period of 2 years or return at customer's request.

Proofs shall be submitted with original copy. Corrections are to be made on "master set" returned marked "O.K." or "O.K. with corrections" and signed by customer. If revised proofs are desired, request must be made when proofs are returned. Printer regrets any errors that may occur through inadvertence, but agrees to hold responsible for proof of the work is posted per customer's O.K. or if changes are communicated verbally. Printer shall not be responsible for errors if the customer has not ordered or has refused to accept proofs, or has failed to return proofs with instructions or changes or has instructed printer to proceed without submission of proofs.

By _____ Date _____
Authorized Signature & Title

PROGRESS PRESS, INC.
By Dawn Davidson

**DESKTOP PRINTING INC.**

*Printing for Corporate America*

7 Melanie Lane, East Hanover, NJ 07936 • (973) 884-8825 Fax: 884-0413

Gary Sutphin, Recorder Treasure, City of Beckley
Please accept our bid for the Beckley Exhibition Coal Mine Brochure
Quanties With Out Varnish: 100M $10,571.00-----150M $13,724.00-----200M $16,775.00
Quanties With Varnish: 100M $10,843.00-----150M $13,995.00-----200M $16,995.00

| | |
|---|---|
| **DESCRIPTION:** | **Exhibition Coal Mine Brochure; 4 panel** |
| **SIZES - BLEEDS:** | **16 x 9 flat sizes: Bleeds** |
| **STOCK COVER:** | **80 # Coated Text Warren Somerset or equal** |
| **MATERIALS SUPPLIED:** | **Printer is to set copy and do layout**<br>**12 transparencies for separations** |
| **COLORS:** | **4/4 4cp ; price with and without varnish** |
| **TYPE OF PROOFS REQUIRED:** | **Blueline/Color proof** |
| **FOLDING - BINDING** | **Roll fold to 4 X 9 finished size** |
| **SEPARATIONS - H/T:** | **12 Separations: 4 X 5 or less / 150 line** |
| **PACKING & DISTRIBUTION:** | **Paper band in 50's; Carton pack to weigh not more than 40 lbs. each** |
| **OTHER SPECIFICATIONS:** | **Ship to:**<br>**Beckley Exhibition Coal Mine**<br>**New River Park**<br>**Beckley, WV 25801** |

Sincerely,
Peter Botta
President

The bids will be reviewed by Councilmen-at-Large Rappold and Mollohan, as well as Mr. Sutphin and Mrs. Morris, for award at a future meeting.

Mr. Sutphin presented the following information to Council concerning the review of the bids for the health insurance for the City of Beckley:

## Annual Cost - Fully Insured

### Medical and Dental

Annual cost based on census of Medical - 44 Single, 174 Family
Dental - 158 Single, 50 Family

| Insurer | Indemnity | PPO |
|---|---|---|
| Current Rates - CIGNA | $1,152,026 | NA |
| Renewal Rates - CIGNA | $1,359,497 | $1,226,033 |
| With Margin Rollover from 1997/1998 Plan Year | $1,284,186 | $1,170,458 |
| MAMSI | $1,165,181 | $1,176,194 |
| Mountain State BCBS | $1,152,026 | $1,120,290 |
| Principal | $1,337,514 | NA |
| Guardian | $1,398,660 | NA |
| Aetna | NA | $1,128,078 |

## Annual Cost - Partially Self-Funded

Note: An additional cost of 20-25% should be added to the projections for runout liability. All quotes were presented on an aggregate basis of claims incurred in 12 months and paid in 12 months. Runouts are the responsibility of the employer.

| TPA/Reinsurer | Indemnity | PPO |
|---|---|---|
| | Without Runouts | Without Runouts |
| CCI Administrators / Baltimore Life | $1,003,591 | NA |
| Benefit Assistance / LINA | $1,144,062 | NA |
| Magic | $ 915,964 | NA |
| WVEBS / Seaboard | NA | $1,075,736 |



It was the recommendation of Mr. Sutphin that the bid for health insurance be awarded to Mountain State Blue Cross-Blue Shield. On a motion by Councilman Rappold and seconded by Councilman Mullohon, this bid award was unanimously approved by Council.

The Mayor presented the name of Mary Jo Sopher for appointment to the Beckley Beautification Commission. Ms. Sopher's term will expire July 1, 2000. On a motion by Councilman File and seconded by Councilwoman Chambers, the appointment of Ms. Sopher was unanimously approved by Council.

The Mayor presented for Council approval a Resolution authorizing him to execute the Agreement with the Department of Transportation, Division of Highways, for the installation of the left turn lane from Rural Acres Drive onto Eisenhower Drive. On a motion by Councilman Rappold and seconded by Councilman Berry, the following Resolution was unanimously approved by Council:

Resolution
~~ORDINANCE~~ NO. _____

Resolution
~~ORDINANCE~~ OF THE COUNCIL OF THE CITY OF BECKLEY, WEST VIRGINIA, AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, WITH REGARD TO THE ESTABLISHMENT OF RULES, REGULATIONS, AND RESPONSIBILITIES GOVERNING THE CONSTRUCTION, USE, MAINTENANCE, AND OPERATION OF US 19 WITHIN THE MUNICIPAL LIMITS OF THE CITY OF BECKLEY, WEST VIRGINIA.

BE IT ENACTED BY THE CITY OF BECKLEY, WEST VIRGINIA, AS FOLLOWS:

1. That the Mayor of the City of Beckley, West Virginia, he and is hereby authorized to execute, acknowledge, and deliver on behalf of the City, an agreement with the West Virginia Department of Transportation, Division of Highways, with regard to the establishment of rules, regulations, and responsibilities governing the construction, use, maintenance, and operation of State Project U341-19-17.02 00, Federal Project STP-0019(185)EQ, all of which is to be constructed within its corporate limits, a copy of which agreement is attached hereto and made a part hereof.

2. That the Clerk does properly attest the signature of said officials and affix the seal of the City to said agreement.

Passed by the Council of Beckley, West Virginia, on _____ day of _____, 19 _____.

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH
CITY OF BECKLEY

I, _____, Clerk, of said City, do hereby certify that the foregoing are true copies from the records of order made and entered by the Council of said City on the _____ day of _____, 19 _____.

_____
Clerk

Mr. Matkovich presented for Council approval a Supplemental Resolution in reference to the Piney Creek Wastewater Treatment Plant Project. On a motion by Councilman File and seconded by Councilwoman Chambers, the following Resolution was unanimously approved by Council:

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



| | |
|---|---|
| PROJECT REVIEWER/BRANCH LEADER DATE | AUTHORIZED OFFICER DATE |
| AUTHORIZED OFFICER DATE | |
| ACCOUNTING CLASSIFICATION - DEP USE ONLY | |
| ACCOUNT NUMBER: | AMOUNT APPROVED: |

SF - 91

Mr. Matkovich presented for first reading an Ordinance for the rezoning of three parcels on Sunset Drive from "R-1", One-Family District, to "B-1', Neighborhood Highway Business District. On a motion by Councilman File and seconded by Councilman Berry, the first reading of this proposed Ordinance was unanimously approved by Council.

The Mayor informed Council that the requested 25 M.P.H. signs have been placed on North Pike Street as well as the Children Playing signs on College Avenue.

Mr. Cannon reported to Council that approximatley 125 structures were damaged during the recent blizzard. Mr. Cartelle also reported that funds may become available under the Home Repair Program for repairs such as these.

Under new business, the Mayor reported that the trees and limbs will be picked up by the Board of Public Works during the week of March 9-13, 1998.

With no further business to be addressed, the meeting was adjourned at 8:20 p.m. on a motion by Councilman File and seconded by Councilman Rappold.

MAYOR

RECORDER-TREASURER

SRF-LP-1
(September 1997)

# 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 DIVISION OF ENVIRONMENTAL PROTECTION, a division of the West Virginia Bureau of Environment (the "DEP"), and the local government designated below (the "Local Government").

CITY OF BECKLEY

(Local Government)

WITNESSETH:

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 20, Article 5I, 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 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 construct, operate and improve a wastewater treatment project and to finance the cost of constructing or acquiring 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 of 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, at 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.

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. 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 Local Government on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Local Government shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority, DEP and the Local Government at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Government 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 Local Government shall notify DEP in writing of such receipt. The Local Government shall submit a Performance Certificate, the form of which is attached hereto as Exhibit A, and being incorporated herein by reference, to DEP within 60 days of the end of the first year after the Project is completed.

2.10 The Local Government shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Local Government 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 this Loan Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 25% completion stage.

2.11 The Local Government hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Authority, DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Local Government, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and forward a copy by the 10th of each month to the Authority.

2.13 The Local Government, during construction of the Project, shall complete Payment Requisition Forms, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward the Form to DEP in compliance with the Local Government's construction schedule.

## ARTICLE III

## Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and DEP to make the Loan is subject to the Local Government's fulfillment, to the satisfaction of the Authority and DEP, of each and all of those certain conditions precedent on or before the delivery date for the Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Local Government shall have delivered to the Authority a report listing the specific purposes for which the proceeds of the Loan will be expended and the procedures as to the disbursement of loan proceeds, including an estimated monthly draw schedule;

(b) The Local Government shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(c) The Local Government shall have authorized the issuance of and delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(d) The Local Government shall either have received bids or entered into contracts for the construction of the Project, which are in an amount and otherwise compatible with the plan of financing described in the Application; provided, that, if the Loan will refund an interim financing of construction, the Local Government must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and DEP shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit D;

(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") necessary for the construction of the Project and operation of the System, 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, 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 Subsection 4.1(b)(ii) hereof, and the Authority and DEP shall have received a certificate of the accountants 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 set forth in Exhibit E hereto.

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 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 approval of DEP.

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions established by federal and state regulations as set forth in Exhibit E hereto at such times as are set forth in Exhibit E.

## 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 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. The revenues generated from the operation of the System 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 an amount at least 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 the net revenues from the System;

(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 established for the payment of debt service on the Local Bonds is funded (whether by Local Bond proceeds, monthly deposits or otherwise) 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 will 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 be sold, mortgaged, leased or otherwise disposed of as a whole or substantially as a whole provided that the net proceeds to be realized from such sale, mortgage, lease or other deposition 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 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 any Local Bond owner 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 operation and maintenance expenses and debt service 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 for non-construction costs) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim funding 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 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 West Virginia Municipal Bond Commission (the "Commission") its required interest, principal and reserve fund 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 to the Authority by the 5th day of such calendar month;

(xvii) That the Commission shall serve as paying agent for all Local Bonds;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Code, 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 Code, 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, the Project is adequate for the purposes for which it was designed and the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project; and

(xx) That the Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the West Virginia Public Service Commission, 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.

The Local Government hereby represents and warrants that the Local Act has been or shall be duly adopted 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, 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 Authority 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, as set forth in the Local Act and in compliance with the provisions of Subsection 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 minimum sums set forth in the Local Act, 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 so as to provide funds sufficient to produce the minimum sums set forth in the Local Act and as required by this Loan Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to Section 4.2 hereof, 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 directly charges upon users 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 local governments in the terms and covenants of loan agreements, 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 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 Project, 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 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 Schedule 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 merges and 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) termination by the Authority and DEP pursuant to Section 6.2 hereof; or

(iii) 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 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 amount of the Loan made by the Authority and DEP as set forth in (iii) above is not terminated due to such non-funding on any balance on 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 shall not be considered an event of default under the 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
[Proper Name of Local Government]

(SEAL)

By: _____
Its: Mayor

Attest:

Date: 2-10-98

_____
Its Recorder

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

By: _____
Its: Chief, Office of Water Resources

Date: 2/13/98

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: _____
Its: Director

Attest:

Date: January 29, 1998

_____
Secretary-Treasurer

APPROVED AS TO FORM PRIOR TO ACKNOWLEDGEMENT THEREOF, THIS 25th day of September, 97
DARRELL V. McGRAW, JR.
ATTORNEY GENERAL
By: _____
DEPUTY ATTORNEY GENERAL

EXHIBIT A

[Form of Performance Certificate]

[TO BE PROVIDED BY DEP]

EXHIBIT B

[Form of Monthly Financial Report]
[Name of Local Government]
[Name of Bond Issue]
Fiscal Year - __
Report Month: _____

| ITEM | CURRENT MONTH | YEAR TO DATE | BUDGET YEAR TO DATE | BUDGET DIFFERENCE |
|---|---|---|---|---|
| 1. Gross Revenues Collected | | | | |
| 2. Operation and Maintenance Expense | | | | |
| 3. Other Bond Debt Payments (including Reserve Fund deposits) | | | | |
| 4. SRF Bond Payments (include Reserve Fund deposits) | | | | |
| 5. Renewal and Replacement Fund Deposit | | | | |
| 6. Funds available for capital construction | | | | |

Witnesseth my signature this __ day of ____, ____.

[Name of Local Government]

By: _____
Authorized Officer

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 that my firm is engineer for the acquisition and construction of _____ to the _____ system (herein called the "Project") of _____ (the "Issuer") to be constructed primarily in _____County, West Virginia, which construction and acquisition are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meaning set forth in the _____ passed by the _____ of the Issuer on _____, 19___, effective _____, 19___, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Division of Environmental Protection ("DEP") dated _____, 19___.

1. The Bonds are being issued for the purpose of _____ _____ (the "Project").

2. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the application submitted to the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least twenty years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application and my firm has ascertained that all contractors 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 by my firm for accuracy, (iv) the Issuer has obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, (v) the rates and charges for the System as adopted by the ____ of the Issuer are sufficient to comply with the provisions of Subsection 4.1(b) of the Loan Agreement, (vi) 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 irrevocably committed therefor, are sufficient to pay the costs of construction and

acquisition of the Project as set forth in the Application, and (vii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this _____ day of _____, 19___.

_____

By _____

West Virginia License No. __

[SEAL]

EXHIBIT E

SPECIAL CONDITIONS

A. The recipient agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations 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)) - The loan recipient that receives $25,000 or more in a fiscal year must obtain audits in accordance with the Single Audit Act of 1984 and OMB Circular 128. Financial statement audits are required once all funds have been received by the loan recipient.

EXHIBIT F

[Monthly Payment Form]

West Virginia Water Development
Authority
1201 Dunbar Avenue
Dunbar, WV 25064

Re: [Name of bond issue]

Dear Sirs:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Local Government] on _____, __.

Sinking Fund:

Interest $_____

Principal $_____

Total: $_____

Reserve Fund: $_____

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
1201 Dunbar Avenue
Dunbar, West Virginia 25064

Gentlemen:

We are bond counsel to _____ (the "Local Government"), a _____.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated _____, 19_, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Local Government and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, 19_ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of $_____, issued in the form of one bond registered as to principal and interest to the Authority, with interest payable _____ 1, ____ 1, ____ 1, and ____ 1 of each year, beginning _____ 1, 19_, at the respective rate or rates and with principal payable in installments on ____ 1 in each of the years, all as follows:

| Year | Installment | Interest Rate |
|---|---|---|

The Local Bonds are issued for the purpose of _____ and 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 enacted by the Local Government on _____ (the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that 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 cannot be amended so as to affect adversely the rights of the Authority or diminish the obligations of the Local Government without the consent of the Authority.

3. The Local Government is a duly organized and presently existing _____ _____, with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Government has legally and effectively enacted the Local Act and all other necessary _____ in connection with the issuance and sale of the Local Bonds. 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 are valid and legally enforceable special obligations of the Local Government, payable from the net revenues of the System referred to in the Local Act and secured by a [first] lien on and pledge of the net revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

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 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 BONDS

| | |
|---|---|
| Principal Amount of Bonds | $ 11,000,000.00 |
| Purchase Price of Bonds | $ 11,000,000.00 |

Interest on the Bonds shall be zero percent from the date of delivery to and including February 29, 2000. Principal and interest on the Bonds is payable quarterly, commencing June 1, 2000, at a rate of 2 % per annum. Quarterly payments will be made thereafter on each September 1, December 1, March 1 and June 1 as set forth on Schedule Y attached hereto and incorporated herein by reference. As of the date of this Loan Agreement, it is the Authority's and DEP's understanding that the Local Government has [other obligations outstanding which have a lien as to the source of and security for payment equal to or superior to the lien being granted by the Bonds] or [provide list of outstanding debt]. (See attached schedule) *

The Local Government shall submit its payments monthly to the West Virginia Municipal Bond Commission with instructions that the West Virginia Municipal Bond Commission will make quarterly payments to the West Virginia Water Development Authority at such address as is given to the Bond Commission in writing by the Authority. If the Reserve Fund 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 Bond Commission. The Local Government shall instruct the Bond 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 Bonds will be fully registered in the name of the West Virginia Water Development Authority as to principal and interest and such Bonds shall grant the Authority a first lien on the net revenues of the Local Government's system.

The Local Government may prepay the 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 Bonds which request must be filed at least 60 days prior to the intended date of issuance.

*City of Beckley Sewerage System Refunding Revenue Bonds, Series 1995A, issued April 1, 1995, in the original principal amount of $3,095,000.

# SCHEDULE Y

City of Beckley, West Virginia
$11,000,000 Loan
20 Years, 2% Interest, 1% Admin Fee

DEBT SERVICE SCHEDULE

| Date | Principal | Coupon | Interest | Total P+I |
|---|---|---|---|---|
| 3/01/2000 | - | - | - | - |
| 6/01/2000 | 112,167.00 | 2.000% | 55,000.00 | 167,167.00 |
| 9/01/2000 | 112,728.00 | 2.000% | 54,439.17 | 167,167.17 |
| 12/01/2000 | 113,292.00 | 2.000% | 53,875.53 | 167,167.53 |
| 3/01/2001 | 113,858.00 | 2.000% | 53,309.07 | 167,167.07 |
| 6/01/2001 | 114,428.00 | 2.000% | 52,739.78 | 167,167.78 |
| 9/01/2001 | 115,000.00 | 2.000% | 52,167.64 | 167,167.64 |
| 12/01/2001 | 115,575.00 | 2.000% | 51,592.64 | 167,167.64 |
| 3/01/2002 | 116,153.00 | 2.000% | 51,014.76 | 167,167.76 |
| 6/01/2002 | 116,733.00 | 2.000% | 50,434.00 | 167,167.00 |
| 9/01/2002 | 117,317.00 | 2.000% | 49,850.33 | 167,167.33 |
| 12/01/2002 | 117,904.00 | 2.000% | 49,263.75 | 167,167.75 |
| 3/01/2003 | 118,493.00 | 2.000% | 48,674.23 | 167,167.23 |
| 6/01/2003 | 119,086.00 | 2.000% | 48,081.76 | 167,167.76 |
| 9/01/2003 | 119,681.00 | 2.000% | 47,486.33 | 167,167.33 |
| 12/01/2003 | 120,279.00 | 2.000% | 46,887.93 | 167,166.93 |
| 3/01/2004 | 120,881.00 | 2.000% | 46,286.53 | 167,167.53 |
| 6/01/2004 | 121,485.00 | 2.000% | 45,682.13 | 167,167.13 |
| 9/01/2004 | 122,093.00 | 2.000% | 45,074.70 | 167,167.70 |
| 12/01/2004 | 122,703.00 | 2.000% | 44,464.24 | 167,167.24 |
| 3/01/2005 | 123,317.00 | 2.000% | 43,850.72 | 167,167.72 |
| 6/01/2005 | 123,933.00 | 2.000% | 43,234.14 | 167,167.14 |
| 9/01/2005 | 124,553.00 | 2.000% | 42,614.47 | 167,167.47 |
| 12/01/2005 | 125,176.00 | 2.000% | 41,991.71 | 167,167.71 |
| 3/01/2006 | 125,802.00 | 2.000% | 41,365.83 | 167,167.83 |
| 6/01/2006 | 126,431.00 | 2.000% | 40,736.82 | 167,167.82 |
| 9/01/2006 | 127,063.00 | 2.000% | 40,104.66 | 167,167.66 |
| 12/01/2006 | 127,698.00 | 2.000% | 39,469.35 | 167,167.35 |
| 3/01/2007 | 128,337.00 | 2.000% | 38,830.86 | 167,167.86 |
| 6/01/2007 | 128,978.00 | 2.000% | 38,189.17 | 167,167.17 |
| 9/01/2007 | 129,623.00 | 2.000% | 37,544.28 | 167,167.28 |
| 12/01/2007 | 130,271.00 | 2.000% | 36,896.17 | 167,167.17 |
| 3/01/2008 | 130,923.00 | 2.000% | 36,244.81 | 167,167.81 |
| 6/01/2008 | 131,577.00 | 2.000% | 35,590.20 | 167,167.20 |
| 9/01/2008 | 132,235.00 | 2.000% | 34,932.31 | 167,167.31 |
| 12/01/2008 | 132,896.00 | 2.000% | 34,271.14 | 167,167.14 |
| 3/01/2009 | 133,561.00 | 2.000% | 33,606.66 | 167,167.66 |
| 6/01/2009 | 134,229.00 | 2.000% | 32,938.85 | 167,167.85 |
| 9/01/2009 | 134,900.00 | 2.000% | 32,267.71 | 167,167.71 |
| 12/01/2009 | 135,574.00 | 2.000% | 31,593.21 | 167,167.21 |
| 3/01/2010 | 136,252.00 | 2.000% | 30,915.34 | 167,167.34 |
| 6/01/2010 | 136,933.00 | 2.000% | 30,234.08 | 167,167.08 |
| 9/01/2010 | 137,618.00 | 2.000% | 29,549.41 | 167,167.41 |
| 12/01/2010 | 138,306.00 | 2.000% | 28,861.32 | 167,167.32 |
| 3/01/2011 | 138,998.00 | 2.000% | 28,169.79 | 167,167.79 |

City of Beckley, West Virginia
$11,000,000 Loan
20 Years, 2% Interest, 1% Admin Fee

DEBT SERVICE SCHEDULE

| Date | Principal | Coupon | Interest | Total P+I |
|---|---|---|---|---|
| 6/01/2011 | 139,693.00 | 2.000% | 27,474.80 | 167,167.80 |
| 9/01/2011 | 140,391.00 | 2.000% | 26,776.34 | 167,167.34 |
| 12/01/2011 | 141,093.00 | 2.000% | 26,074.38 | 167,167.38 |
| 3/01/2012 | 141,798.00 | 2.000% | 25,368.92 | 167,166.92 |
| 6/01/2012 | 142,507.00 | 2.000% | 24,659.93 | 167,166.93 |
| 9/01/2012 | 143,220.00 | 2.000% | 23,947.39 | 167,167.39 |
| 12/01/2012 | 143,936.00 | 2.000% | 23,231.29 | 167,167.29 |
| 3/01/2013 | 144,656.00 | 2.000% | 22,511.61 | 167,167.61 |
| 6/01/2013 | 145,379.00 | 2.000% | 21,788.33 | 167,167.33 |
| 9/01/2013 | 146,106.00 | 2.000% | 21,061.44 | 167,167.44 |
| 12/01/2013 | 146,836.00 | 2.000% | 20,330.91 | 167,166.91 |
| 3/01/2014 | 147,571.00 | 2.000% | 19,596.73 | 167,167.73 |
| 6/01/2014 | 148,308.00 | 2.000% | 18,858.87 | 167,166.87 |
| 9/01/2014 | 149,050.00 | 2.000% | 18,117.33 | 167,167.33 |
| 12/01/2014 | 149,795.00 | 2.000% | 17,372.08 | 167,167.08 |
| 3/01/2015 | 150,544.00 | 2.000% | 16,623.11 | 167,167.11 |
| 6/01/2015 | 151,297.00 | 2.000% | 15,870.39 | 167,167.39 |
| 9/01/2015 | 152,053.00 | 2.000% | 15,113.90 | 167,166.90 |
| 12/01/2015 | 152,814.00 | 2.000% | 14,353.64 | 167,167.64 |
| 3/01/2016 | 153,578.00 | 2.000% | 13,589.57 | 167,167.57 |
| 6/01/2016 | 154,346.00 | 2.000% | 12,821.68 | 167,167.68 |
| 9/01/2016 | 155,117.00 | 2.000% | 12,049.95 | 167,166.95 |
| 12/01/2016 | 155,893.00 | 2.000% | 11,274.36 | 167,167.36 |
| 3/01/2017 | 156,672.00 | 2.000% | 10,494.90 | 167,166.90 |
| 6/01/2017 | 157,456.00 | 2.000% | 9,711.54 | 167,167.54 |
| 9/01/2017 | 158,243.00 | 2.000% | 8,924.26 | 167,167.26 |
| 12/01/2017 | 159,034.00 | 2.000% | 8,133.04 | 167,167.04 |
| 3/01/2018 | 159,830.00 | 2.000% | 7,337.87 | 167,167.87 |
| 6/01/2018 | 160,629.00 | 2.000% | 6,538.72 | 167,167.72 |
| 9/01/2018 | 161,432.00 | 2.000% | 5,735.58 | 167,167.58 |
| 12/01/2018 | 162,239.00 | 2.000% | 4,928.42 | 167,167.42 |
| 3/01/2019 | 163,050.00 | 2.000% | 4,117.22 | 167,167.22 |
| 6/01/2019 | 163,865.00 | 2.000% | 3,301.97 | 167,166.97 |
| 9/01/2019 | 164,685.00 | 2.000% | 2,482.65 | 167,167.65 |
| 12/01/2019 | 165,508.00 | 2.000% | 1,659.22 | 167,167.22 |
| 3/01/2020 | 166,336.00 | 2.000% | 831.68 | 167,167.68 |
| TOTAL | 11,000,000.00 | - | 2,373,391.55 | 13,373,391.55 * |

* Plus $14,833.70 one-percent administrative fee paid quarterly. Total fee paid over the life of the loan is $1,186,696.

WV MUNICIPAL BOND COMMISSION
Suite 337 Building 3
1800 Washington St. E
State Capitol Complex
Charleston, WV 25305
(304) 348-3971

**NEW ISSUE REPORT FORM**

Date of Report: March 18, 1998

(See Reverse for Instructions)

ISSUER & ISSUE: The City of Beckley Sewerage System Revenue Bonds Series 1998 A (SRF Loan)

ADDRESS: P. O. Drawer AJ Beckley, West Virginia 25802 COUNTY: Raleigh

PURPOSE OF ISSUE: New Money xx Refunding ____ Refunds issue(s) dated: ____

ISSUE DATE: March 17, 1998 CLOSING DATE: March 17, 1998

ISSUE AMOUNT: $ 11,000,000.00 RATE: 2% plus 1% administrative fee

1st DEBT SERVICE DUE: June 1, 2000 1st PRINCIPAL DUE: June 1, 2000

1st DEBT SERVICE AMOUNT: $167,167.00 PAYING AGENT: Bank One, West Virginia, Charleston

| ISSUERS | UNDERWRITERS |
|---|---|
| BOND COUNSEL: Vaughan & Withrow | BOND COUNSEL: |
| Contact Person: Jim Withrow | Contact Person: |
| Phone: 342-3900 | Phone: |
| CLOSING BANK: Bank One, West Virginia | ESCROW TRUSTEE: |
| Contact Person: Mike Puskar | Contact Person: |
| Phone: 348-5667 | Phone: |
| KNOWLEDGEABLE ISSUER CONTACT | OTHER: |
| Contact Person: Gary Sutphin | Contact Person: |
| Position: Recorder | Function: |
| Phone: 256-1754 | Phone: |

DEPOSITS TO MBC AT CLOSE:
By ____ Wire
____ Check
____ IGT

Accrued Interest: ____ Days $ ____
Capitalized Interest: $ ____
Reserve Account: $ ____
Other: ____ $ ____

REFUNDS & TRANSFERS BY MBC AT CLOSE:
By ____ Wire
____ Check
____ IGT

To Escrow Trustee: $ ____
To Issuer: $ ____
To CIF-State Treasury $ ____
To Other: ____ $ ____

NOTES: ____

FOR MUNICIPAL BOND COMMISSION USE ONLY:
DOCUMENTS REQUIRED: ____
TRANSFERS REQUIRED: ____

Form MBC-1 (9/87)

FIRST READING

9-9-97

SECOND READING

9-23-97

AN ORDINANCE TO AMEND AND REENACT SECTION 9-240, 242, 245, 247, and 248 - DIVISION 3 - RATES AND CHARGES - ARTICLE II - SEWERS AND SEWAGE DISPOSAL - CHAPTER 9 - MUNICIPAL UTILITIES AND SERVICES - BY ESTABLISHING A NEW RATE FOR THE TREATMENT OF SEWAGE

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BECKLEY that the following rate structure is established for the treatment of sewage:

Sec. 9-240. Schedules for Service Inside City.

(a) Monthly Rates. There is established a schedule of just and equitable rates of 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, $4.78 per 1,000 gallons.

2) Next three thousand (3,000) gallons used per month, $4.49 per 1,000 gallons.

3) Next twenty thousand (20,000) gallons used per month, $4.10 per 1,000 gallons.

4) All over twenty-five thousand (25,000) gallons used per month, $3.68 per 1,000 gallons. Minimum $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 one thousand (1,000) gallons for each occupant per month, but not less than the minimum monthly rate.

(d) Sewer Connection Charges. 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 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 two (2) user classifications shall be:

1) For residential and commercial service.
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 waste shall pay charges determined as provided in Section 9-242.

(g) Delinquency Penalty. On all accounts, not paid in full within twenty (20) days of the billing date, the penalty of ten percent (10%) will be added to the net amount shown.

(h) These rates do not apply to the former customers of the Raleigh County Airport Authority who will continue to pay according to their duly authorized tariff.

(i) Sale for Resale. For all services rendered to the North Beckley Public Service District on and after 12:01 a.m. January 23, 1994, a rate of $1.26 per one thousand (1,000) gallons.

Sec. 9-242. Industrial User Charge and Fees.

All users heretofore classified by the Sanitary Board as producing industrial wastes, shall pay an Industrial User's Industrial Cost Recovery Charge for the treatment of industrial waste which shall be calculated on the basis of the following formula:

$$Ci=VoVi+BoBi+SoSi$$

Ci = charge to industrial users per year

Vo = average unit cost of transport and treatment chargeable to volume, in dollars per gallon

Vi = volume of wastewater from industrial 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 industrial users in pounds per year

So = average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound

Si = weight of total solids from industrial users in pounds per year

Sec. 9-245. Reconnection Charge.

A $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.

Sec. 9-247. Surcharge Formula to be Applied in Cases Where Surface Drainage is Connected to the City's Sanitary Sewer System.

APPLICABILITY

Wherever the City has discovered that a customer's 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 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.

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.

Sec. 9-248. Bad Check Charge.

There shall be a bad check charge assessed against each customer writing a bad check for payment of sewer charges in the amount of the bad check charge 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 §61-3-39e.

This Ordinance shall become effective forty-five (45) days from passage.

I certify that the foregiong is a true and accurate copy of an Ordinance duly adopted by the Common Council of the City of Beckley at its regular meeting on September 23, 1997. This Ordinance is valid and in effect as of March 18, 1998.

Date:

3-18-98

Emmett S. Pugh III
Mayor
City of Beckley

$11,000,000
THE CITY OF BECKLEY, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BONDS
SERIES 1998 A

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

The undersigned, DANIEL B. YONKOSKY, Director of the West Virginia Water Development Authority (the "Authority"), and EMMETT S. PUGH, III, Mayor of The City of Beckley (the "Issuer"), hereby certify as follows:

1. On the 18th day of March, 1998, at 180 Association Drive, Charleston, West Virginia, the Authority received the entire original issue of $11,000,000 in aggregate principal amount of The City of Beckley, West Virginia, Sewerage System Revenue Bonds, Series 1998 A (the "Series 1998 A Bonds"). The Series 1998 A Bonds, as so received on original issuance, are dated March 18, 1998.

2. At the time of such receipt of the Series 1998 A Bonds, the Series 1998 A Bond AR-1 had been executed by Emmett S. Pugh, III, as Mayor, by his manual signature and attested by Gary L. Sutphin, as City Recorder, by his manual signature, and the official seal of the Issuer had been impressed upon the Series 1998 A Bond, and had been authenticated by Bank One, West Virginia, National Association, as Registrar.

3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Series 1998 A Bonds, the sum of $960,915, as the initial disbursement of the proceeds of the Series 1998 A Bonds. The balance of such proceeds shall be disbursed in accordance with the terms of the Loan Agreement.

In Witness Whereof, each of the parties has caused this instrument to be executed as of the 18th day of March, 1998.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By _____
Director

THE CITY OF BECKLEY, WEST VIRGINIA

By _____
Mayor

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
3-9-98
By Commission Order

Entered February 23, 1998

CASE NO. 97-1217-S-CN

THE CITY OF BECKLEY
Application for a certificate of convenience and necessity to acquire and construct certain additions and improvements to the City's Sanitary Sewer System.

## RECOMMENDED DECISION

On September 22, 1997, The City of Beckley (City or Applicant) filed an application, duly verified, for a certificate of convenience and necessity to acquire and construct certain additions and improvements to the City's sanitary sewer system. The project is designed to upgrade the existing water treatment plant; upgrade the Whitestick pump station; replace the existing Pinecrest interceptor line; and perform various other upgrades and repairs. The City estimated construction costs to be approximately $10,473,709. The proposed project is to be financed by 1997 Bonds (SRF Construction Loan), in the amount of $10,332,462; funds from the Department of Environmental Protection Advance Assistance Program in the amount of $101,247; and local funds in the amount of $40,000. The City also proposed increases in its sewer rates and charges.

By Order entered on September 25, 1997, the City was directed to give notice of the filing of the application by publishing a copy of the September 25, 1997 Order once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Raleigh County, making due return to the Commission of proper certification of publication immediately after publication. The Order directed that anyone desiring to make objection to the application must do so, in writing, within (30) days after publication of the notice to P. O. Box 812, Charleston, West Virginia. The Order indicated that, if no protests are received within the thirty-day period, the Commission may waive formal hearing and grant the application based upon the evidence submitted in the application and its review thereof.

On October 1, 1997, the Commission received an affidavit of publication from the City indicating that the Notice of Filing was published in The Register Herald on September 29, 1997.

On October 8, 1997, Commission Staff filed an Initial Joint Staff Memorandum recommending that this matter be referred to the Division of Administrative Law Judges. Staff further advised that, in order to begin its review of the case, additional information would be needed.

On October 17, 1997, the Applicant filed its Rule 42 Exhibit.

On October 20, 1997, this matter was referred to the Division of Administrative Law Judges for a decision to be rendered on or before April 20, 1998.

On December 29, 1997, Michael McNulty, Technical Analyst of the Water and Wastewater Division of the Public Service Commission, requested that the Executive Secretary include additional information in the case file.

On December 30, 1997, the Applicant filed additional information regarding the project. Included in the filing were an approved facility plan from the Department of Environmental Protection (DEP), dated 1994; DEP letters authorizing bid of the project; an affidavit of publication of the filing; an SRF bonding commitment letter; a copy of the bond ordinance approved by the Beckley Common Council authorizing the issuance of not more than $11,000,000 in sewerage system revenue bonds; and a copy of the ordinance authorizing the issuance of $1,500,000 in revenue finance anticipation notes. The City indicated that the SRF bond issue should be completed in February of 1998. The Applicant requested expedited treatment of this matter.

On December 31, 1997, Commission Staff filed a Final Joint Staff Memorandum indicating that its final recommendation would be filed at a later date.

On January 7, 1998, the City of Beckley filed additional information regarding the review of this project. Also on January 7, 1998, a revised Rule 42 Exhibit was filed.

By Order issued January 15, 1998, this matter was set for hearing to be held on February 4, 1998, in Hearing Room No. 2, Public Service Commission Building, 201 Brooks Street, Charleston, West Virginia, to commence at 1:30 p.m.

On January 28, 1998, Staff filed its Final Joint Staff Memorandum with attachments, recommending that the project be approved. The project is to be constructed under two contracts. Contract No. 2 consists of a new 4.5 MDG wastewater treatment plant and improvements to the existing 3.5 MDG wastewater treatment plant. The new 4.5 MDG wastewater treatment plant includes two sequencing batch reactor tanks, an equalization basin, a control/blower building, a pretreatment system, influent valve vaults, plant piping, and site work. The improvements to the existing wastewater treatment plant include a grit removal system, bar screen, bar screen/grit removal building, a sludge dewatering building with sludge handling pumps, UV disinfection system, plant pump station, sludge holding tanks, an effluent outfall, site work, electrical work, plant piping, instrumentation and controls, and all necessary appurtenances. Contract No. 3 consists of renovations to the Whitestick Pump Station, which include the replacement of the existing pumps, and renovation of the mechanical bar screen, chlorine building, and chlorine contact tank. The combined sewer outflow settling tanks are to be refurbished and new flow measurement equipment installed. The project will also include the necessary electrical work,

site piping, and necessary appurtenances. Contract No. 1 addressed the replacement of the Pinecrest sanitary sewer interceptor.

Staff believes the project is necessary. The City's Piney Creek 3.5 MGD wastewater treatment facility, which services the southern portion of the City and the surrounding communities of Mabscott, Sprague and Raleigh, is presently operating at or near design capacity. DEP issued an Administrative Order permitting a maximum of three (3) new residential customers per month, or 15,000 gallons, and no other non-domestic discharges without approval from DEEP.

Construction for the project is estimated to be approximately $11,407,104.00. The project is to be financed by an SRF Loan in the amount of $11,000,000.00 at an interest rate not to exceed 2%, with an annual administrative fee not to exceed 1%, for a period not to exceed 20 years; and a cash contribution-in-aid-of-construction from the City in the amount of $407,143.00. Staff is satisfied that the City has adopted a municipal rate ordinance in compliance with West Virginia Code §§8-11-4, 16-13-16 and 24-2-4b. Staff believes that the City has complied with the Commission's Rules and Regulations for Commission Review of Electric Cooperatives, Natural Gas Cooperatives, Telephone Cooperatives and Municipal Rate Changes. The new rates passed by the ordinance are sufficient for the project.

On February 3, 1998, the City of Beckley advised that it had no objections to Staff's recommendation. The Applicant requested that the hearing scheduled for February 4, 1998, be cancelled. A Procedural Order was issued cancelling the hearing.

## DISCUSSION

The Administrative Law Judge is concerned that the estimated cost of this project is more than $900,000.00 higher than the amount provided in the Notice of Filing. The information in the file indicates that the bids for Contract No. 3 were higher than expected and that the project has been downsized. The Notice of Filing indicates that the project is to acquire and construct certain additions and improvements to the City's Sanitary Sewer System without outlining the specifics of the individual contracts. The application indicates that the project is designed to upgrade the existing Wastewater Treatment Plant, upgrade the Whitestick Pump Station, replace the existing Pinecrest interceptor line and other various upgrades and repairs. Staff asserts that the City's present rates are adequate for the project, as revised. Since the increased cost of the project will not affect the rates passed by the City and the notice of the project provides for improvements to the system, the Administrative Law Judge will approve the project pursuant to Staff's recommendation.

## FINDINGS OF FACT

1. On September 22, 1997, The City of Beckley filed an application, duly verified, for a certificate of convenience and necessity to acquire and construct certain additions and improvements to the City's sanitary

sewer system including construction of a new treatment plant; the upgrade of the existing water treatment plant; the upgrade of the Whitestick pump station; the replacement of the existing Pinecrest interceptor line; and other upgrades and repairs. (See, application).

2. The estimated project cost has been revised from $10,473,700 to $11,407,143. (See, correspondence received January 7, 1998; Final Joint Staff Memorandum, with attachments, received January 27, 1998).

3. Financing for the project has been amended to include an SRF Loan in the amount of $11,000,000.00 at an interest rate not to exceed 2%, with an annual administrative fee not to exceed 1%, for a period not to exceed 20 years; and a cash contribution-in-aid-of-construction from the City in the amount of $407,143.00. (See, correspondence received January 7, 1998; Final Joint Staff Memorandum, with attachments, received January 27, 1998).

4. The City passed a municipal ordinance, on September 23, 1997, to become effective forty-five days from passage or November 7, 1997, adopting sufficient rates for the revised project. (See, Final Joint Staff Memorandum, with attachments, received January 27, 1998).

5. Notice of filing of the application was published on September 29, 1997, in The Register Herald, a newspaper of general circulation in Raleigh County, with no protests being received to the application. (See, affidavit of publication received October 1, 1997; case file generally).

6. The project's plans have been accepted by the West Virginia Division of Environmental Protection. (See, correspondence received December 29, 1997).

7. The project is necessary because the City's Piney Creek 3.5 MGD wastewater treatment facility, which services the southern portion of the City and the surrounding communities of Mabscott, Sprague and Raleigh, is presently operating at or near design capacity and DEP has issued an Administrative Order permitting only a maximum of three (3) new residential customers or 15,000 gallons per month, and no other non-domestic discharges without its prior approval. (See, Final Joint Staff Memorandum, with attachments, received January 27, 1998).

8. Staff recommended that the project be approved, though the project costs were revised from $10,473,700 to $11,407,143, because the City's rates adopted in its September 23, 1997 Rate Ordinance are sufficient for the project. (See, Final Joint Staff Memorandum, with attachments, received January 27, 1998).

## CONCLUSIONS OF LAW

1. The public convenience and necessity require the issuance of a certificate of convenience and necessity to the City of Beckley to construct a new 4.5 MGD wastewater treatment plant, including t[illegible] sequencing batch reactor tanks, an equalization basin, a control/blowe[illegible] building, a pretreatment system, influent valve vaults, plant piping and site work; and improvements to the existing 3.5 MDG wastewater treatment

plant, which include a grit removal system, bar screen, bar screen/grit removal building, a sludge dewatering building with sludge handling pumps, UV disinfection system, plant pump station, sludge holding tanks, an effluent outfall, site work, electrical work, plant piping, instrumentation and controls, and all necessary appurtenances; and renovations to the Whitestick Pump Station that include the replacement of the existing pumps, renovation of the mechanical bar screen, chlorine building, and chlorine contact tank, refurbishing of the combined sewer outflow settling tanks and installation of the new flow measurement equipment, electrical work, site piping, and necessary appurtenances.

2. The proposed project is adequately financed and economically feasible.

3. The rates passed by the City in its September 23, 1997 Rate Ordinance are sufficient to support the project.

4. It is reasonable to approve the financing of the project, being a State Revolving Fund Loan in the amount of $11,000,000.00 at an interest rate not to exceed 2%, with an annual administrative fee not to exceed 1% for a period not to exceed 20 years, and a cash contribution-in-aid-of-construction from the City in the amount of $407,143.00.

ORDER

IT IS, THEREFORE, ORDERED that the revised application, filed by the City of Beckley, for a certificate of convenience and necessity to construct a new 4.5 MGD wastewater treatment plant; construct improvements to the existing 3.5 MDG wastewater treatment plant; and construct renovations to the Whitestick Pump Station, be, and hereby is, approved.

IT IS FURTHER ORDERED that the financing of the project, being an SRF Loan in the amount of $11,000,000.00 at an interest rate not to exceed 2%, with an annual administrative fee not to exceed 1%, for a period not to exceed 20 years, and a cash contribution-in-aid-of-construction from the City in the amount of $407,143.00, be, and hereby is, approved.

IT IS FURTHER ORDERED that, if there is a change in the cost, scope, terms and conditions or financing of this project, the City notify the Commission immediately and obtain Commission approval of said change, prior to commencing construction.

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 of the Commission 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 said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed 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 or Decision the order of the Commission sooner than five (5) days after approval of such wavier by the Commission.

Susan A. Murensky
Susan A. Murensky
Administrative Law Judge

SAM/s

STATE OF WEST VIRGINIA
WATER DEVELOPMENT AUTHORITY
1201 DUNBAR AVENUE
DUNBAR, WV 25064
Telephone (304) 558-3612
Telecopier (304) 558-0299

RECEIVED
MAY - 9 1995

May 5, 1995

The Honorable Emmett S. Pugh, III
Mayor, City of Beckley
Sanitary Board
301 South Heber Street
Beckley WV 25802-2826

PRELIMINARY APPLICATION -
CITY OF BECKLEY (SEWER PROJECT)

The West Virginia Infrastructure and Jobs Development Council (the "Council") has reviewed the Preliminary Application for the above-referenced project and has determined that the project is technically and financially feasible within the guidelines of the Act. (See attached Sewer Assessment Committee comments.)

The Council recommends that the City of Beckley and the North Beckley PSD continue to study and consider consolidation. Notwithstanding that the communities have not reached a final decision concerning consolidation of their respective systems, the Council recommends that the City of Beckley pursue a State Revolving Fund Loan of $8,702,653 and an Advance Assistance Grant of $101,247 from the Division of Environmental Protection and that local funds of $40,000 be provided to complete the financing of the project.

If you have any questions concerning this decision, please contact Daniel Yonkosky, Director of the Water Development Authority, who serves as chairman of the Council's Funding Committee.

Daniel B. Yonkosky

RUSSELL L. ISAACS, CHAIRMAN
WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

db

c Mike Johnson, Division of Environmental Protection
Region I Planning and Development Council

engine

RECEIVED
FEB 0 8 1995
WATER DEVELOPMENT
AUTHORITY

GASTON CAPERTON
GOVERNOR

DIVISION OF ENVIRONMENTAL PROTECTION
617 Broad Street
Charleston, WV 25301-1251

DAVID C. CALLAGHAN
DIRECTOR

# MEMORANDUM

TO: Bernie Yonkosky, Chairman
Funding Committee
WV Infrastructure and Jobs Development Council

DATE: February 7, 1995

RE: City of Beckley Preapplication

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1. This committee has reviewed the pre-application and preliminary engineering report submitted for the above referenced project in accordance with Chapter 31, Article 15A. It has been determined that the proposed project is:

   (a) _____ Consistent with the intent of the Infrastructure and Jobs Development Act and is the most cost-effective, environmentally sound alternative for solving the wastewater needs in this area.

   (b) _____ Not consistent with the Act and may not be the most cost effective, environmentally sound alternative for solving the wastewater needs in this area.

   (c) __X__ Same as (a) above except that certain issues need to be addressed prior to design and construction as the attached comments indicated.

   (d) _____ The preliminary application and engineering report are not sufficiently complete for our review to be completed at this time. Our attached comments indicate apparent deficiencies.

2. Our recommendation is that:

   (a) _____ The Funding Committee needs to review the proposed sources of funding to determine the best mix of grant and/or loan funds in accordance with applicable guidelines.

   (b) __X__ The Funding Committee should recommend that the Council approve the proposed project and its funding plan.

(c) _____ The Funding Committee does not need to review the funding assumptions on this project because of major deficiencies in the engineering report. The Committee should suggest to the Council the proposed project funding be denied until technical comments have been resolved.

3. Other remarks:

(a) Specific comments of DEP and Health need to be addressed and understood prior to commencing design.

(b) This project is technically feasible and, as in the previous North Beckley PSD project, do not believe the issue of consolidation should be revisited now as it was previously considered from 1991 to 1993 and rejected.

4. Attachments: Technical Comments of agencies

Review
Certification:

_X_ Positive, considering all information presented

____ Negative, considering all information presented

Mike Johnson
Chairman's Representative
Sewer Assessment Committee

MJ/a

cc: Sewer Assessment
Committee Members
Susan Riggs, PSC
Bill Herold, Health
Tom Holder, WVDO
Pravin Sangani, OWR-Permits
Fred Hypes, OWR-C.A.

# interoffice
MEMORANDUM

**to:** Fred Hypes, DEP, Infrastructure Sewer Assessment Committee

**from:** William S. Herold, Jr., P.E. WSH

**re:** Preliminary Application for the City of Beckley Sewage Facilities, Raleigh County

**date:** January 24, 1995

This project is technically feasible and we recommend approval. However, there are some concerns we have relating to the construction of this project. We strongly recommend the operation and maintenance personnel at the existing wastewater treatment plant be consulted during the final plan design to ensure future proper operation and maintenance from a practical operational point of view. Also, it is our understanding that the proposed construction site is in rock and construction costs could dramatically increase if there is to be a lot of excavation. Consideration should be given to constructing as many units as possible above ground to reduce costly rock excavation.

cc: John Brown

RECEIVED
JAN 27 1995
Water Resources
Construction Assistance

from the desk of...

**William S. Herold, Jr., P.E.**
Assistant Director
Environmental Engineering Division
815 Quarrier Street, Suite 418
Charleston, WV 25301

(304) 558-2981
Fax: (304) 558-0691

GASTON CAPERTON
GOVERNOR

DIVISION OF ENVIRONMENTAL PROTECTION
617 Broad Street
Charleston, WV 25301-1251

DAVID C. CALLAGHAN
DIRECTOR

M E M O R A N D U M

TO: Mike Johnson, P.E., Assistant Chief, OWR

FROM: Frederick L. Hypes, P.E., Engineering Branch Leader

DATE: January 26, 1995 FH

SUBJECT: City of Beckley - Infrastructure Pre-Application Technical Review

---

The Pre-Application and Preliminary Engineering Report for the City of Beckley has been reviewed. This is the same project as that proposed in the City's SRF Facilities Plan, and is acceptable provided that the following conditions are met:

1. A proper and complete Infiltration/Inflow analysis must be conducted during project design, and the recommendations of this report implemented before the project is authorized to bid.

2. New tankage to be located at the Piney Creek Wastewater Treatment Plant must be constructed above-ground because of rock at the site.

3. Specific input from the operational staff be obtained prior to initiation of design.

Provided these conditions are met, I recommend that the Sewer Assessment Committee endorse the project and seek the concurrence of the Funding Committee and the approval of the Council.

GASTON CAPERTON
GOVERNOR

**DIVISION OF ENVIRONMENTAL PROTECTION**
1201 Greenbrier Street
Charleston, WV 25311-1088

DAVID C. CALLAGHAN
DIRECTOR

INTER-OFFICE MEMORANDUM
OFFICE OF WATER RESOURCES

TO: Mike Johnson, P. E.
Committee Chairman
Sewer Assessment Committee

FROM: Pravin G. Sangani, P. E. Pravin
Municipal Branch Leader, Permits

DATE: February 3, 1995

RE: West Virginia Infrastructure and Jobs Development Council
Preapplication
City of Beckley, Sanitary Board

In accordance with your request, received the 23rd day of January 1995, please be advised that we have reviewed the preapplication for the proposed City of Beckley, Sanitary Board, wastewater treatment facilities improvements project.

Based on the information presented, we have no significant objections to the proposed project. It is our understanding that the project involves domestic wastewater only. Any proposals and/or provisions for nondomestic wastewater must be reviewed in accordance with the requirements of Title 46, Series 2, Section 14 of the Legislative Rules.

With the additional wastewater treatment capacity, Beckley will have to develop and implement a Publicly Owned Treatment Works Pretreatment Program. Beckley, under the current Permit, shall develop the program, and submit for approval, on or before the 11th day of March 1995.

Order Number 3510 was entered, on the 14th day of July 1994, with the City of Beckley, Sanitary Board. This Order requires Beckley, in part, to achieve compliance with the final prescribed effluent discharge limitations of their WV/NPDES Water Pollution Control Permit, for five(5) day Biochemical Oxygen Demand, Total Suspended Solids, Total Kjeldahl Nitrogen, Fecal Coliform, pH, Dissolved Oxygen and Total Residual Chlorine, within 18 months from the approval date of the Facilities Plan, or, within 18 months from the date of finalization of other project financing.

*Public Service Commission*
Richard E. Hitt, General Counsel

201 Brooks Street, P.O. Box 812
Charleston, West Virginia 25323

Phone: (304) 340-0317
FAX: (304) 340-0372

February 6, 1995

Mr. Fred Hypes
Office of Water Resources
Division of Environmental Protection
617 Broad Street
Charleston, WV 25301
FAX 558-3778

RE: Public Service Commission Staff Review Comments
City of Beckley Infrastructure Pre-application

Dear Fred:

Attached is the Public Service Commission Staff's (Staff) comments regarding its review of the City of Beckley's (City's) preliminary application to the Infrastructure Council regarding its proposed treatment plant upgrade and construction of collection lines.

As reflected in the attached comments, the Staff believes that the City has demonstrated a need for its proposed project. The Staff's reveiw of the financial information provided in the application reflected a number of adjustments made by the City that would be challenged by the Staff in a rate proceeding. In addition, the Staff is not confident that the City properly allocated proposed operation and maintenance expenses between classes. While the Staff believes the proposed average rate of $17.33 will change, it does not appear that these items were so sorely miscalculated that the average rate would exceed $25. The Staff also notes that the City included in its calculations revenue it currently receives from North Beckley PSD; however, depending on the project approved for North Beckley PSD, the City may not continue to receive those revenues.

Finally, although the Staff believes the City's project appears to be technically feasible, the Staff is not proferring an opinion as to whether the City's project is a preferable alternative to consolidation with North Beckley PSD. Please let me know if you have any questions regarding this matter. Thank you for your attention.

Sincerely,

Susan J. Riggs

Susan J. Riggs
Staff Attorney

SJR/s
Attachment

| Post-it™ Fax Note 7671 | Date Feb. 6-95 | # of pages ▶ 3 |
|---|---|---|
| To Fred Hypes | From Susan Riggs | |
| Co./Dept. DEP | Co. PSC | |
| Phone # | Phone # | |
| Fax # 558-3778 | Fax # | |

CITY OF BECKLEY
ENGINEERING COMMENTS: Ingrid Ferrell

1. The project consists of constructing a 3.5 MGD sequencing batch reactor (SBR) plant and upgrading grit collection, sludge handling, and controls. The project also includes upgrading combined sewer overflows for additional treatment, replacing 4,700 L.F. of line, and correcting problems with the Whitestick pump station.

2. The treatment plant upgrades will benefit all customers and the application states 585 new customers will be included in the project. The project cost is estimated at $8,843,900 and the cost per customer is $1,071 which is very reasonable.

3. Initially, Staff questioned the need for this project if North Beckley PSD would discontinue using Beckley's plant for treatment. However, only a portion of North Beckley PSD's flows are treated at Beckley and this flow is offset by the new federal prison which will connect to Beckley.

4. Beckley is in the process of eliminating the excessive infiltration and inflow (I/I) in its system. The I/I removal over the last two years shows a decrease in flow at the treatment plant even though billed flows have increased. However, even with the I/I removal program, the plant capacity is insufficient with wet weather flows. Growth has been restricted to the equivalent of 3 residential connections per month. Even if the I/I removal could happen immediately, Staff believes Beckley still has shown the need to upgrade its treatment plant due to the growth in its service area.

5. This project will require a certificate of convenience and necessity from the Public Service Commission.

CITY OF BECKLEY
FINANCIAL COMMENTS: Diane Davis Calvert

1. The City of Beckley is proposing to finance the majority (98.4%) of the proposed sewer system improvements with a loan from the State Revolving Fund. With a loan of $8,702,653, at a 3% rate for twenty years, the City indicates a required rate of $17.33 based on 4,500 gallons per customer per month.

2. Many of the adjustments made by the City to reflect the required revenues are questionable and would be challenged if there were to be a rate proceeding before the Public Service Commission. However, these items would not likely move all in one direction either increasing or decreasing the required revenue requirements.

3. Furthermore, the City rate proposal is based on a class cost of service study and is not a straight percentage increase, thereby increasing the rates of some classes at a greater percentage than others. Similar to the City's total revenue requirements, areas of the City's class cost of service study could be challenged.

4. Either a change in the overall revenue requirements or just a change in the allocation of those requirements could impact the average rate based on 4,500 gallons.

5. However, from the City's proposed rate of $17.33 to a rate of $25.00 for 4,500 gallons would be an additional 44.25% increase. An adjustment of this magnitude would only result if the City's numbers were successfully challenged on many substantial non-offsetting areas of the its calculation of revenue requirements and/or rate design.

6. Based on the City's application, the proposed project does not require the substitution of any grant funds for the proposed debt financing to result in a rate of less than $25.00 for 4,500 gallons used per month.

7. The City's proposed revenues include revenues for treating the flows of another utility which has a pending preapplication, North Beckley PSD. The City has reflected these revenues at the District's 1993 flows, which were only a portion of the District's total flows, and with an increase in the rate of more than 61%. The District's preapplication proposes that none of its flow would be treated by the City.

8. It can not be determined from this proposal whether or not both utilities could benefit from the City building plant capacity to treat all the flows of the District as a separate utility customer.

# Study of Consolidation of rates between City of Beckley and North Beckley Public Service District

| | Revenue Requirements $ | average customers rate $ | Projected Revenue $ |
|---|---|---|---|
| present projects: | | | |
| Beckley | 2,937,718 | 17.70 | |
| North Beckley PSD | 2,496,312 | 40.08 | |
| Total Revenue Requirement | 5,434,030 | | |
| Projected Consolidated Rates | | 24.09 | 5,498,518 |

Six Year Integration

| | Beckley $ | NBPSD $ | |
|---|---|---|---|
| First Year | 18.59 | 38.08 | 5,456,100 |
| Second Year | 19.47 | 35.67 | 5,453,207 |
| Third Year | 20.53 | 32.87 | 5,454,729 |
| Fourth Year | 21.60 | 30.46 | 5,481,213 |
| Fifth Year | 22.66 | 28.06 | 5,507,697 |
| Sixth Year | 24.09 | 24.09 | 5,498,518 |

Assumptions in the Model

1. All costs are fixed for the full period
2. Present water consumption patterns will continue at higher usage rates
3. Requested financing combinations are approved in current project proposals
4. Total cost for both projects and projected O&M expenses are correct
5. A percentage increase in the average bill results in a identical change in the total revenue produced
6. Obtain unified rates within 6 years (resulting in approximately a 7% change in rates each year)

NORTH BECKLEY PUBLIC SERVICE DISTRICT
CITY OF BECKLEY
SEWER PROJECT

REVENUE REQUIREMENTS:

| | |
|---|---|
| Operating Expenses | |
| North Beckley PSD | 796,042 |
| City of Beckley | 1,875,744 |
| Debt Service Requirements | |
| North Beckley PSD – New | 1,691,584 |
| City of Beckley – New | 584,818 |
| City of Beckley – Old | 283,450 |
| City of Beckley – Debt Reserve | 58,482 |
| Renewal & Replacement | 137,875 |
| Debt Coverage – 115% | 189,133 |
| Total Revenue Requirements | $5,617,127 |
| Projected Consolidated Rate | $24.96 |

Analysis of the different approaches between Smith, Cochran, Hicks CPAs and the Staff of the Public Service Commission in calculating a consolidated rate for North Beckley PSD and the City of Beckley.

| | SMITH, CPAs | PSC |
|---|---|---|
| Total revenue requirement used to calculate rate (expenses, debt service & coverage) (difference: $183,097) | 5,617,127 | 5,434,030 |
| Resulting Consolidated Rate | $24.96 | $24.09 |
| Percent Difference in Revenue Requirement | 3.37% | |
| Percent Difference in Consolidated Rate | 3.61% | |

1. Staff added to the Beckley plan 500 customers which were not accounted for in the Pre-Application, however Staff's consolidated rate would be nearly equal that of the Smith Cochran, Hicks CPAs using the same revenue requirement.

2. 703 Customers in the Sprague area were counted twice in the Pre-Application of the District. Staff corrected for this error and this change increased our projected average rate $37.28 to $40.08. This resulted in an increased consolidated rate for both the District's and the City of Beckley's project from $23.52 to $24.09.

$11,000,000
THE CITY OF BECKLEY, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BONDS
SERIES 1998 A

GENERAL CERTIFICATE OF:

1. TERMS
2. NO LITIGATION
3. SALE OF BONDS; SIGNATURES
4. DELIVERY AND PAYMENT
5. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
6. MEETINGS
7. INCUMBENCY AND OFFICIAL NAME
8. CERTIFICATIONS
9. SPECIMEN BOND
10. CONFLICT OF INTEREST
11. CERTIFICATION OF COPIES OF DOCUMENTS
12. RATES
13. GOVERNMENTAL APPROVALS AND BIDDING
14. BOND PROCEEDS
15. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
16. PRIVATE USE OF FACILITIES
17. NO FEDERAL GUARANTY
18. CLEAN WATER ACT
19. LAND AND RIGHTS-OF-WAY
20. LOAN AGREEMENT
21. IRS INFORMATION RETURN

We, the undersigned MAYOR and the undersigned RECORDER of The City of Beckley, West Virginia (the "City"), and the undersigned CITY ATTORNEY, hereby certify in connection with the $11,000,000 aggregate principal amount of The City of Beckley, West Virginia Sewerage System Revenue Bonds, Series 1998 A (the "Series 1998 A Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this Certificate and not otherwise defined herein shall have the same meanings as in the Ordinance of the City, enacted by the Council of the City on November 25, 1997, and effective on December 9, 1997, and a Supplemental Resolution adopted by the Council of the City on February 24, 1997 (collectively, the "Ordinance") and the Loan Agreement entered into among the City, the West Virginia Water

Development Authority and the West Virginia Division of Environmental Protection, dated January 29, 1998.

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 issuance and delivery of the Series 1998 A Bonds; the acquisition and construction of the Project; or the collection of the gross revenues of the sewerage system (the "System") or the pledge of the Net Revenues to the payment of the principal of and interest on the Series 1998 A Bonds; nor questioning the proceedings and authority by which the City authorized the issuance and sale of the Series 1998 A Bonds; nor questioning the validity or enforceability of the Series 1998 A Bonds, the Ordinance or the Loan Agreement or any agreement or instrument relating thereto, used or contemplated by the Loan Agreement; nor questioning the valid existence of the City or the authority or titles of the Mayor, Recorder and the members of the Council and other officials of the City to their respective offices; nor questioning any proceeding, procedure, action or thing followed, taken or done in connection with the Series 1998 A Bonds.

3. SALE OF SERIES 1998 A BONDS; SIGNATURES: The Series 1998 A Bonds were sold to the West Virginia Water Development Authority (the "Authority") at an agreed purchase price of $11,000,000. As of the date hereof, the Series 1998 A Bonds were signed by the manual signature of the Mayor, and the official seal of the City, which seal is impressed upon this Certificate, was impressed thereon and attested by the manual signature of the City Recorder.

4. DELIVERY AND PAYMENT: The undersigned Mayor did, on the date hereof, deliver to the Authority, the entire issue of the Series 1998 A Bonds, as one bond numbered AR-1. Payment of the proceeds of the Series 1998 A Bonds in the amount of $960,915 shall be advanced on the date hereof, and the balance of the proceeds shall be disbursed to the City as set forth in the Loan Agreement.

5. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the City or the Sanitary Board since December 29, 1997. Except for the City's Series 1995 A Bonds in the original principal amount of $3,095,000, which Series 1995 A Bonds will share a first lien on the Net Revenues of the System with the Series 1998 A Bonds, there is no indebtedness or obligation of the City outstanding and unpaid or for which full and irrevocable provision for payment has not been made which has priority over or ranks on a parity with the Series 1998 A Bonds as to the sources of and security for payment. The City's 1996 Revenue Anticipation Notes in the principal amount of $1,500,000 will be paid with the first advance from the proceeds of the Series 1998 A Bonds. Based upon the certification of Smith, Cochran & Hicks, CPAs, the rates and charges for the use of the system are sufficient to satisfy the requirements contained in the City's Series 1995 A Bonds for the issuance of parity bonds. The City is current on all payments required under the Series 1995 A Bonds.

6. MEETINGS: All actions, ordinances, resolutions, orders and agreements taken by and entered into by or on behalf of the City in any way connected with the issuance of the Series

1998 A Bonds were authorized or adopted at meetings of the Council of the City duly and regularly called and held pursuant to the City Charter and Rules of Procedure of the Council of the City and all applicable statutes, including Chapter 6, Article 9A of the West Virginia Code of 1931, as amended, and a quorum of duly elected, qualified and acting members of the Council was present and acting at all times during all such meetings.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the City is "The City of Beckley" and it is a municipal corporation of the State of West Virginia, in Raleigh County of said State. The names and dates of commencement and termination of current terms of office of the Mayor, City Recorder, members of Council are as follows:

City Council

| Name | Office | Date Term of Office Began | Date Term of Office Ends |
|---|---|---|---|
| Emmett S. Pugh, III | Mayor | July 1, 1995 | June 30, 1999 |
| Gary R. Sutphin | Recorder | July 1, 1995 | June 30, 1999 |
| A. K. Minter, Jr. | Councilman | July 1, 1995 | June 30, 1999 |
| William H. File, III | Councilman | July 1, 1995 | June 30, 1999 |
| Stephen B. Nickell | Councilman | July 1, 1995 | June 30, 1999 |
| Tim R. Berry | Councilman | July 1, 1995 | June 30, 1999 |
| Madrith Chambers | Councilman | July 1, 1995 | June 30, 1999 |
| Howard Mollohan | Councilman | July 1, 1995 | June 30, 1999 |
| Robert R. Rappold | Councilman | July 1, 1995 | June 30, 1999 |

The duly elected or appointed members of the Sanitary Board are:

| | |
|---|---|
| Emmett S. Pugh, III | Chairman |
| Thomas Keyser | Member |
| John Sadowski | Engineer Member |

The duly appointed and acting City Attorney is Mark Matkovich, Attorney at Law, Beckley, West Virginia.

8. CERTIFICATIONS: (1) the City has duly performed all of its obligations to be performed at or prior to the Closing and each of the City's representations and warranties contained in the Loan Agreement is true as of the Closing; (2) the City has authorized, by all necessary action, the execution, delivery, receipt and due performance of the Series 1998 A Bonds, the Ordinance and any and all such other agreements and documents as may be required to be enacted, adopted, executed, delivered and received by the City in order to carry out, give effect to and consummate the transactions contemplated by the Loan Agreement; and (3) the enactment and due performance of the Ordinance and the execution, delivery, receipt and due

performance of the Series 1998 A Bonds and the other agreements contemplated by the Loan Agreement, under the circumstances contemplated thereby, and the City's compliance with the provisions thereof, will not conflict with or constitute on the City's part a breach of or a default under any existing law, court or administrative regulation, decree or order or any agreement, indenture, mortgage, lease or other instrument to which the City is subject or by which the City is or may be bound.

9. SPECIMEN BOND: Attached hereto as Exhibit A is a specimen of the Series 1998 A Bond which, except as to execution and authentication, is identical in all respects to such Series 1998 A Bond this day delivered to the Authority and being substantially in the form prescribed in the Ordinance.

10. CONFLICT OF INTEREST: Except as may have been reviewed and approved by the West Virginia Ethics Commission, no officer or employee of the City has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the City and the sale of any land, materials, supplies or services to the City, or to any contractor supplying the City, relating to the Series 1998 A Bonds, the Ordinance or the Loan Agreement, 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.

11. CERTIFICATION OF COPIES OF DOCUMENTS: The copies of the below-listed documents hereto attached or delivered herewith or heretofore delivered are true, correct and complete copies of the originals of the documents of which they purport to be copies, and such original documents are in full force and effect and have not been repealed, rescinded, amended or changed in any way unless modification appears from later documents also listed below:

Loan Agreement
Bond Ordinance
Supplemental Resolution
PSC Certificate of Convenience and Necessity
Oaths of Office of Council Members
Minutes of Council Meetings of November 11, November 25, 1997 and February 24, 1998
Approval of the Project from the West Virginia Infrastructure and Jobs Development Council

12. RATES: The City has duly enacted a sewer rate ordinance on September 23, 1997, setting rates and charges for services of the System. The time for appeal of such rate ordinance has expired and there has been no appeal thereof. The rates and charges of such rate ordinance are effective upon the sale and delivery of the Series 1998 A Bonds.

13. GOVERNMENTAL APPROVALS AND BIDDING. All applicable approvals required by law for the construction of the Project, the operation of the System and the issuance

of the Series 1998 A Bonds, including, without limitation, the issuance of a certificate of convenience and necessity by the Public Service Commission of West Virginia, have been obtained and remain in full force and effect. Competitive bids, compatible with the plan of financing as described in the application to the Authority, have been obtained in accordance with the provisions of Chapter 5, Article 22 of the West Virginia Code, and such bids remain in full force and effect. Each of the contractors has made or will make the required provisions for all insurance policies and payment and performance bonds and such insurance policies and such bonds have been or will be reviewed by the City Attorney for accuracy.

14. BOND PROCEEDS: On the date hereof, the City received $960,915 from the Authority and the DEP, being a portion of the principal amount of the Series 1998 A Bonds and more than a de minimis amount of the proceeds of the Series 1998 A Bonds. The balance of the principal amount of the Series 1998 A Bonds will be advanced to the City as the construction of the Project progresses.

15. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE. Upon enactment of the Ordinance, an abstract of the ordinance and notice of public hearing was published as a Class II legal advertisement in the Register Herald, a newspaper of general circulation within the City of Beckley, the first publication of which occurred not less than 10 days prior to the public hearing. At such public hearing the governing body heard the comments of all persons relating to the construction of the Project and the issuance of the Series 1998 A Bonds. No petition was filed with the governing body opposing the construction of the Project or the issuance of the Series 1998 A Bonds.

16. PRIVATE USE OF FACILITIES: The City 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 Series 1998 A Bonds and the interest thereon. Less than 10% of the proceeds of the Series 1998 A 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, payments in respect of such property, or to be derived from payments (whether or not to the City) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Series 1998 A 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 Series 1998 A Bonds, including the disproportionate related business use of the proceeds of the Series 1998 A Bonds, and none of the payment of principal on, 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 City) 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 Series 1998 A Bonds. None of the proceeds of the issue of the Series 1998 A 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").

17. NO FEDERAL GUARANTY: The Series 1998 A 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.

18. CLEAN WATER ACT: The Project as described in the Bond Ordinance complies with Sections 208 and 303(e) of the Clean Water Act.

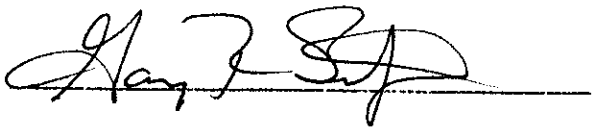
19. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase or, if necessary, by condemnation by the City, and are adequate for such purposes and are not and will not be subject to any liens, encumbrances, reservations or exceptions that adversely affect or interfere in any way with use thereof for such purposes. The costs thereof, including any properties that nay have to be acquired by condemnation are, in the opinion of the undersigned, within the ability of the City to for the same without jeopardizing the security of or payments on the Bonds.

20. LOAN AGREEMENT: As of the date hereof, (i) the representations of the City 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 make any untrue statement of a 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 of the knowledge of the undersigned, no event affecting the City has occurred since the date of the Loan Agreement which should be disclosed for the purpose for which it is to used or which is necessary to disclose therein in order to make the statements and information therein not misleading; and (iv) the City is in compliance with the Loan Agreement.

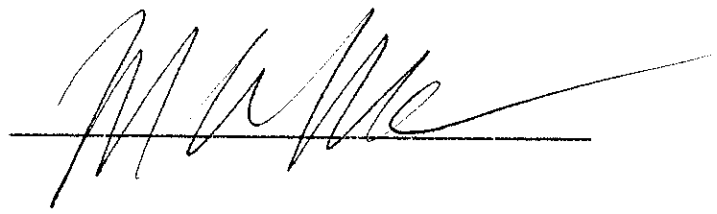
21. IRS INFORMATION RETURN: On the date hereof, the undersigned Mayor did officially sign a properly completed IRS Form 8038-G and will cause such executed Form 8038-G to be filed in a timely manner with Internal Revenue Service Center, Philadelphia, Pennsylvania.

Witness our signatures and the official corporate seal of The City of Beckley, all as of the 18th day of March, 1998.

Mayor



Recorder



City Attorney

(SEAL)

# Oath of Office

## CITY OF BECKLEY

### BECKLEY, WEST VIRGINIA

Date: June 22, 1987

I, Emmett S. Pugh III, who was duly elected Councilman-at-Large of the City of Beckley at an election held on May 26, 1987, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 1, 1987 as Councilman-at-Large of the City of Beckley for a four year term beginning July 1, 1987, 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 skill and judgement and as required by law.

WITNESS my hand and seal this the 22nd day of June, 19 87.

Emmett S. Pugh III (SEAL)

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

Taken, subscribed and sworn to before me this the 22nd day of June, 19 87.

(SEAL)
CITY of BECKLEY

# Oath of Office

## CITY OF BECKLEY

### BECKLEY, WEST VIRGINIA

Date: July 1, 1991

I, William H. File III, who was duly elected Councilman - Ward II of the City of Beckley at an election held on May 28, 1991, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 3, 1991, as Councilman - Ward II of the City of Beckley for a four year term beginning July 1, 1991, 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 II 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 1st day of July, 1991.

William H. File, III (SEAL)

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

Taken, subscribed and sworn to before me this the 1st day of July, 1991.

(SEAL)
CITY of BECKLEY

Judge John C. Ashworth

# Oath of Office

## CITY OF BECKLEY

### BECKLEY, WEST VIRGINIA

Date: July 1, 1991

I, Howard L. Mollohan, who was duly elected Councilman-at-Large of the City of Beckley at an election held on May 28, 1991, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 3, 1991, as Councilman-at-Large of the City of Beckley for a four year term beginning July 1, 1991, 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 1st day of July, 19 91.

(SEAL)

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

Taken, subscribed and sworn to before me this the 1st day of July, 19 91.

(SEAL)
CITY of BECKLEY

Judge John C. Ashworth

# Oath of Office

## CITY OF BECKLEY

### BECKLEY, WEST VIRGINIA

Date: July 1, 1991

I, Madrith B. Chambers, who was duly elected Councilwoman - Ward V of the City of Beckley at an election held on May 28, 1991, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 3, 1991, as Councilwoman - Ward V of the City of Beckley for a four year term beginning July 1, 1991, 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 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 1st day of July, 19 91.

_____(SEAL)

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

Taken, subscribed and sworn to before me this the 1st day of July, 19 91.

_____(SEAL)
CITY of BECKLEY

_____
Judge John C. Ashworth

# Oath of Office

## CITY OF BECKLEY

### BECKLEY, WEST VIRGINIA

Date: July 1, 1991

I, Robert R. Rappold, who was duly elected Councilman-at-Large of the City of Beckley at an election held on May 28, 1991, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 3, 1991, as Councilman-at-Large of the City of Beckley for a four year term beginning July 1, 1991, 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 1st day of July, 1991.

Robert R. Rappold (SEAL)

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

Taken, subscribed and sworn to before me this the 1st day of July, 1991.

(SEAL)

CITY of BECKLEY

Judge John C. Ashworth

# Oath of Office

## CITY OF BECKLEY

### BECKLEY, WEST VIRGINIA

Date: July 1, 1991

I, A. K. Minter, Jr., who was duly elected Councilman - Ward I of the City of Beckley at an election held on May 28, 1991, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held June 3, 1991, as Councilman - Ward I of the City of Beckley for a four year term beginning July 1, 1991, 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 1st day of July, 1991.

A. K. Minter Jr. (SEAL)

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

Taken, subscribed and sworn to before me this the 1st day of July, 1991.

(SEAL)

CITY of BECKLEY

Judge John C. Ashworth

# Oath of Office

## CITY OF BECKLEY

### BECKLEY, WEST VIRGINIA

Date: March 23, 1995

I, Tim R. Berry, who was duly appointed Councilman - Ward IV for the City of Beckley by Emmett S. Pugh III, Mayor, effective March 23, 1995, 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 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 23rd day of March, 1995.

_____(SEAL)

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

Taken and sworn to before me this 23rd day of March, 1995.

_____(SEAL)
CITY of BECKLEY

# Oath of Office

## CITY OF BECKLEY

### BECKLEY, WEST VIRGINIA

Date: July 1, 1995

I, Stephen B. Nickell, who was duly elected Councilman - Ward III of the City of Beckley at an election held on May 23, 1995, and duly certified by the Common Council of the City of Beckley, acting as a Board of Canvassers at a meeting held May 30, 1995 as Councilman - Ward III of the City of Beckley for a four year term beginning July 1, 1995, 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 1st day of July, 1995.

Stephen B. Nickell (SEAL)

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

Taken, subscribed and sworn to before me this the 1st day of July, 1995.

(SEAL) Judge
CITY of BECKLEY

$11,000,000
THE CITY OF BECKLEY, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BONDS
SERIES 1998 A

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

Bank One, West Virginia, National Association
Charleston, West Virginia 25301

We herewith hand to you Bond No. AR-1, constituting the entire original issue of The City of Beckley, West Virginia Sewerage System Revenue Bonds, Series 1998 A, dated March 18, 1998, (the "Bonds") executed by the Mayor and Recorder of The City of Beckley (the "Issuer") and bearing the official seal of the Issuer. The Bonds are authorized to be issued under and pursuant to an Ordinance passed by the Issuer on November 25, 1997, and a Supplemental Resolution adopted by the Issuer on February 24, 1998 (the "Ordinance").

You are hereby requested and authorized, pursuant to the Ordinance, to authenticate, register and deliver the Bonds in the name of the West Virginia Water Development Authority, as Original Purchaser thereof.

Dated this 18th day of March, 1998.

THE CITY OF BECKLEY

By _____
Mayor

Form **8038-G** (Rev. May 1993)

Department of the Treasury Internal Revenue Service

# Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)

▶ See separate instructions.

(Use Form 8038-GC if the issue price is under $100,000.)

OMB No. 1545-0720

## Part I Reporting Authority

If Amended Return, check here ▶ ☐

| | | |
|---|---|---|
| 1 Issuer's name: The 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. Drawer AJ | Room/suite | 4 Report number: G19 98 - 1 |
| 5 City, town, state, and ZIP code: Beckley, West Virginia 25802 | | 6 Date of issue: March 18, 1998 |
| 7 Name of issue: Sewerage System Revenue Bonds Series 1998 A | | 8 CUSIP Number: N/A |

## Part II Type of Issue (check applicable box(es) and enter the issue price)

| | | Issue price |
|---|---|---|
| 9 | ☐ Education (attach schedule–see instructions) | $ |
| 10 | ☐ Health and hospital (attach schedule–see instructions) | |
| 11 | ☐ Transportation | |
| 12 | ☐ Public safety | |
| 13 | ☒ Environment (including sewage bonds) | 11,000,000.00 |
| 14 | ☐ Housing | |
| 15 | ☐ Utilities | |
| 16 | ☐ Other. Describe (see instructions) ▶ | |
| 17 | If obligations are tax or other revenue anticipation bonds, check box ▶ ☐ | |
| 18 | If obligations are in the form of a lease or installment sale, check box ▶ ☐ | |

## Part III Description of Obligations

| | | (a) Maturity date | (b) Interest rate | (c) Issue price | (d) Stated redemption price at maturity | (e) Weighted average maturity | (f) Yield | (g) Net interest cost |
|---|---|---|---|---|---|---|---|---|
| 19 | Final maturity | March 1, 2020 | 2.0 % | | | | | |
| 20 | Entire issue | | | 11,000,000.00 | 11,000,000.00 | 10.788 years | 2.005 % | 2.00002 % |

## Part IV Uses of Original Proceeds of Bond Issue (including underwriters' discount)

| | | | | |
|---|---|---|---|---|
| 21 | Proceeds used for accrued interest | | 21 | -0- |
| 22 | Issue price of entire issue (enter amount from line 20, column (c)) | | 22 | 11,000,000.00 |
| 23 | Proceeds used for bond issuance costs (including underwriters' discount) | 23 15,000.00 | | |
| 24 | Proceeds used for credit enhancement | 24 -0- | | |
| 25 | Proceeds allocated to reasonably required reserve or replacement fund | 25 -0- | | |
| 26 | Proceeds used to refund prior issues | 26 -0- | | |
| 27 | Total (add lines 23 through 26) | | 27 | 15,000.00 |
| 28 | Nonrefunding proceeds of the issue (subtract line 27 from line 22 and enter amount here) | | 28 | 10,985,000.00 |

## Part V Description of Refunded Bonds (complete this part only for refunding bonds)

| | | |
|---|---|---|
| 29 | Enter the remaining weighted average maturity of the bonds to be refunded ▶ | N/A years |
| 30 | Enter the last date on which the refunded bonds will be called ▶ | |
| 31 | Enter the date(s) the refunded bonds were issued ▶ | |

## Part VI Miscellaneous

| | | |
|---|---|---|
| 32 | Enter the amount of the state volume cap allocated to the issue ▶ | N/A |
| 33 | Enter the amount of the bonds designated by the issuer under section 265(b)(3)(B)(i)(III) (small issuer exception) ▶ | N/A |
| 34 | Pooled financings: | |
| a | Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units ▶ | N/A |
| 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 ▶ | |
| 35 | If the issuer has elected to pay a penalty in lieu of rebate, check box ▶ ☐ | |

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.

**Please Sign Here**

Signature of officer: Emmett Pugh

Date: March 18, 1998

Type or print name and title: Emmett Pugh, III, Mayor

THE CITY OF BECKLEY
Sewerage System Revenue Bonds Series 1998 A
(West Virginia SRF Program)

# 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 the $11,000,000 Sewerage System Revenue Bonds, Series 1998 A, of the Issuer, dated the date hereof (the "Bonds"), hereby certify as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986 and applicable regulations (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 ordinance authorizing the Bonds duly enacted by the Issuer on November 25, 1997 (as Supplemented, the "Bond Ordinance").

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 March 18, 1998, the date on which the Bonds are to be physically delivered in exchange for more than a de minimis amount of the principal amount of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. The Bonds were sold on March 18, 1998, to the West Virginia Water Development Authority (the "Authority"), pursuant to a Loan Agreement dated January 29, 1998, by and among the Issuer, the Authority and the West Virginia Division of Environmental Protection (the "DEP") for an aggregate purchase price of $11,000,000 (100% of par), at which time the Issuer received $960,915 of the principal amount of the Bonds from the Authority. The balance of the proceeds will be distributed to the Issuer in accordance with the provisions of the Loan Agreement. No accrued interest has been or will be paid on the Bonds.

6. The Issuer has covenanted in the Bond Ordinance not to take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Bonds which would cause any of the Bonds to be "arbitrage bonds" within the meaning of

Section 148 of the Code. The Issuer has, therefore, covenanted not to 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 Section 148 of the Code. The Issuer, in the Bond Ordinance, has further covenanted that it will take all actions that may be required of it 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.

7. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purpose of (i) paying a portion of the costs of acquisition and construction of 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 thereof.

8. Not later than simultaneously with the delivery of the Bonds, the Issuer shall enter into agreements which require the Issuer to expend in excess of $100,000 on the Project, constituting a substantial binding commitment. Acquisition, construction and equipping of the Project shall proceed with due diligence to completion, and with the exception of proceeds constituting capitalized interest (if any) and 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 the Project on or before March 1, 2000. The construction of the Project is expected to be completed on or before March 1, 2000.

9. The total coat of the Project (including all costs of issuance of the Bonds) is estimated at $11,418,143. Sources and uses of funds for the Project are as follows:

SOURCES

| | |
|---|---|
| Proceeds of the Bonds | $11,000.000.00 |
| Funds of the Issuer | 418,143.00 |
| Total Sources | $11,418,143.00 |

USES

| | |
|---|---|
| Construction | $9,898,903.00 |
| Engineering | 952,365.00 |
| Contingency | 408,875.00 |
| Site Acquisition | 40,000.00 |
| Bond Counsel | 46,000.00 |
| Total Uses | $11,418,143.00 |

The amount of the costs of the Project is estimated to be at least equal to the gross proceeds of the Bonds. Except as set forth 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 Bond: is 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 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 if previously established by the Prior Ordinances):

(1) Revenue Fund;

(2) Renewal and Replacement Fund;

(3) Bond Construction Trust Fund;

(4) Series 1995 Bonds Sinking Fund;

(5) Within the Series 1995 Bonds Sinking Fund, the Series 1995 Bonds Reserve Account and the Series 1995 Bonds Redemption Account;

(6) Series 1998 Bonds Sinking Fund; and

(7) Within the Series 1998 Bonds Sinking Fund, the Series 1998 Bonds Reserve Account.

11. Pursuant to Article V of the Bond Ordinance, the proceeds of the Bonds will be deposited as follows:

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

(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.

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.

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 1998 A Bonds Reserve Account, and when fully funded, shall apply such remaining moneys as directed by the Authority.

12. Moneys held in the Series 1998 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 1998 Bonds Sinking Fund and Series 1998 Bonds Reserve Account, if any, will be withdrawn therefrom and deposited into the Bond Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Ordinance.

13. Except for the Series 1998 Bonds Sinking Fund and the Series 1998 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. 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 housing desegregation plan 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 moneys received from the sale of the Bonds, if any, will be deposited in the Series 1998 Bonds Reserve Account or any other reserve or replacement fund. The amounts deposited in the Series 1998 Bonds Reserve Account from time to time by the Issuer will not exceed the maximum annual principal of and interest on the Bonds and will not exceed 125% of average annual principal of and interest on the Bonds. Amounts in the Series 1998 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 1998 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.

Because amounts in the Renewal and Replacement Fund may be expended for other purposes, there is no reasonable assurance that any such amounts would be available to meet debt service if the Issuer encounters financial difficulties; thus, such amounts may be invested without yield limitation.

14. Not later than simultaneously with the delivery of die Bonds, the Issuer shall enter into a contract for the construction of the Project, and the amount to be expended pursuant to such contract exceeds the lesser of 2 1/2% of the estimated total Project cost financed with proceeds from the sale of the Bonds or $100,000.

15. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The Project is expected to be completed by September 1, 1999.

16. Except for a reasonable temporary period until such proceeds are needed for the purpose for which such Bonds were issued or as otherwise allowed, 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.

17. The Issuer will comply with the provisions of the Code, for which the effective date precedes the date of delivery of its Bonds to the Authority.

18. With the exception of the amount deposited in the Series 1998 Bonds Sinking Fund for payment of interest on the Bonds, if any, and the amount deposited in the Series 1998 Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 24 months from the date of issuance thereof.

19. The Issuer does not expect to sell or otherwise dispose of the Project in whole or in part prior to the last maturity date of the Bonds.

20. The Series 1998 Bonds Sinking Fund (other than the Series 1998 Bonds Reserve Account therein) is intended primarily to achieve a proper matching of

payments of debt service on the Bonds each year. The Series 1998 Bonds Sinking Fund (other than the Series 1998 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 1/12th of annual debt service on the Bonds, or 1 year's interest earnings on the Series 1998 Bonds Sinking Fund (other than the Series 1998 Bonds Reserve Account therein). Except as otherwise allowed, any money deposited in the Series 1998 Bonds Sinking Fund for payment of the principal of or interest on the Bonds (other than the Series 1998 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 1998 Bonds Sinking Fund (other than in the Series 1998 Bonds Reserve Account therein) will be spent within a 1-year period beginning on the date of receipt.

21. 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.

22. 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.

23. 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 have been or will be used to make or finance loans to, any person who is not a governmental unit.

24. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

25. The Issuer shall use the Bond proceeds solely for the costs of the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

26. 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 and refrain from taking such actions as shall be necessary to comply with the Code in order ensure the interest on the Bonds is excludable from gross income for federal income tax purposes.

27. The Bonds are not and will not be, in whole or in part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

28. The Issuer has retained the right to amend or supplement its authorizing documents if such amendment or supplement is necessary to preserve the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

29. The Issuer shall comply with the yield restriction on the proceeds of the Bonds as set forth in the Code.

30. The Issuer has either (a) funded the Series 1998 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 1998 Bonds Reserve Account which will be funded with payments made on a monthly basis over a 10 year period until such Series 1998 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 1998 Bonds Reserve Account and the Series 1998 Bonds Sinking Fund (established for the annual payment of principal and interest) will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

31. The Issuer shall submit to the Authority within 15 days following the end of each bond year a certified copy of its rebate calculation or, if the Issuer qualifies for the small governmental issuer exception to rebate, the Issuer shall submit 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.

32. 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 any of 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 any of the Bonds.

33. The transactions contemplated herein do 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.

34. The Issuer will rebate to the United States the amount, if any, required by the Code and will take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

35. 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.

36. The Issuer shall file Form 8038-G in a timely fashion with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

37. On the basis of the foregoing, it is not expected that the proceeds of any of the Bonds will be used in a manner that would cause any of the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

38. 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.

39. Vaughan & Withrow 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.

40. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

Dated this 18th day of March, 1998.

THE CITY OF BECKLEY

By _____
Emmett Pugh, III, Mayor

$11,000,000
THE CITY OF BECKLEY, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BONDS
SERIES 1998 A

# REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 18th day of March, 1998, by and between THE CITY OF BECKLEY, a municipal corporation and a political subdivision of the State of West Virginia (the "Issuer"), and BANK ONE, WEST VIRGINIA, NATIONAL ASSOCIATION, a national banking association, as bond registrar and authenticating agent (the "Registrar").

WHEREAS, the Issuer has contemporaneously with the execution hereof issued and sold the bonds described above (the "Bonds"); and

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 enacted by the Issuer on November 25, 1997, effective December 9, 1997, and a supplemental resolution adopted by the Issuer on February 24, 1998, authorizing issuance of the Bonds (collectively herein the "Ordinance"), copies of which are respectively attached as Exhibits A and B hereto and incorporated herein by reference; and

WHEREAS, the Ordinance appoints Bank One, West Virginia, National Association to act as Registrar for the Bonds;

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 with the intention of maintaining the exclusion of interest on the Bonds from gross income for federal income tax purposes, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

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, from time to time the compensation for services rendered hereunder provided in the annexed schedule and reimbursement for reasonable expenses incurred in connection therewith.

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. The Registrar may resign as Registrar at any time by giving at least 60 days written notice to the Issuer. The Registrar may be removed as Registrar at any time by an instrument filed with the Registrar and signed by the Issuer.

Notices shall be delivered to the parties at the following addresses:

ISSUER:

The City of Beckley
P. O. Drawer AJ
Beckley, West Virginia 25802
Attention: Mayor

REGISTRAR

Bank One, West Virginia, National Association
P. O. Box 1113
Charleston, West Virginia 25324
Attention: Corporate Trust Department

8. Unless otherwise so notified, the Registrar shall register all Bonds in the name of the West Virginia Water Development Authority.

9. All notices and communications required or permitted hereunder, except as otherwise expressly agreed in writing, shall be in writing and shall be delivered by hand or sent by mail or sent by telex, telecopier, or telegraph, addressed to the respective party at the appropriate address in Section 7 hereof.

10. The Registrar shall maintain records which indicate the date and volume of services rendered hereunder. Such records shall include, but not be limited to, records of the Bonds or

portions thereof paid by the Registrar. Such records and the applicable premises of the Registrar shall be subject to inspection by duly designated agents, designees or officials of the Issuer for the purpose of reviewing the adequacy of procedures, systems capabilities methods of operation. Any such inspection may be made during normal banking hours after reasonable prior written notice.

11. The Registrar warrants and represents that it is a national banking association, and in good standing under the laws of the United States of America, may lawfully conduct business in the State of West Virginia, and is lawfully empowered, pursuant to such laws, to accept the duties and obligations contemplated and as provided in this agreement and to serve in the capacity of Registrar thereunder.

12. There is no litigation pending of threatened in any court, either State or Federal, calling into question the creation, organization or existence of the Registrar or the authority of the Registrar to perform its duties under this agreement or the Ordinance.

13. This Registrar's Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

IN WITNESS WHEREOF, THE CITY OF BECKLEY and BANK ONE, WEST VIRGINIA, NATIONAL ASSOCIATION, have each caused this Registrar's Agreement to be executed in their names and on their behalf, by their duly authorized officers, all as of the date first above written.

THE CITY OF BECKLEY

By _____
Mayor

BANK ONE, WEST VIRGINIA, NATIONAL ASSOCIATION

By _____
Client Service Officer

$11,000,000
THE CITY OF BECKLEY, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BONDS
SERIES 1998 A

CERTIFICATE OF REGISTRATION OF BONDS

I, Michael E. Puskar, Client Service Officer, of Bank One, West Virginia, National Association, of Charleston, West Virginia, as Registrar (the "Registrar") under the Ordinance providing for the issuance of the Bonds described above, hereby certify that on the 12th day of March, 1998, the fully registered Sewerage System Revenue Bonds, Series 1998 A in the stated principal amount of $11,000,000, designated "The City of Beckley, Sewerage System Revenue Bonds, Series 1998 A" numbered AR-1, and dated the date hereof were 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 Bank One, West Virginia, National Association, Charleston, West Virginia, as Registrar.

WITNESS my signature as of this 18th day of March, 1998.

BANK ONE, WEST VIRGINIA,
NATIONAL ASSOCIATION

By Michael E. Puskar
Client Service Officer

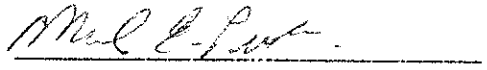
$11,000,000
THE CITY OF BECKLEY, WEST VIRGINIA
SEWERAGE SYSTEM REVENUE BONDS
SERIES 1998 A

## REGISTRAR'S CERTIFICATE

The undersigned, on behalf of BANK ONE, WEST VIRGINIA, NATIONAL ASSOCIATION, Charleston, West Virginia, a national banking association (the "Bank"), hereby certifies as follows with respect to the above-captioned Bonds (the "Bonds"):

1. The Bank has full power and authority to enter into and carry out the provisions of the Registrar's Agreement, dated as of March 18, 1998, between The City of Beckley (the "Issuer") and the Bank (the "Agreement").

2. The person whose title, name and signature is set forth below holds the position by election or appointment by the Board of Directors of the Bank shown opposite her name, and such person has been respectively named and designated as an authorized officer of the Bank to authenticate and register the Bonds, to deliver certificates on behalf of the Bank in connection with the closing of the sale of the Bonds and to take any other actions required by the Agreement.

Client Service Officer Michael E. Puskar 

3. The above signed, Michael E. Puskar, was duly authorized to, and did on or prior to the date hereof, execute and deliver the Agreement to the Issuer on behalf of the Bank.

4. The Bank has received from the Issuer on the date hereof the Bonds, being one certificate, namely No. AR-1, in the principal amount of $11,000,000, payable as to principal and interest, and maturing all as set forth therein. At the time of such receipt, the Bond had been executed by the manual signature of the Mayor of the City, impressed with the seal of the City, and attested by the manual signature of the City Recorder.

5. The Bank has caused the Series 1998 A Bonds to be duly authenticated by the manual signature of Michael E. Puskar, by attaching to such Bonds a certificate in the following terms:

## CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of The City of Beckley Sewerage System Revenue Bonds, Series 1998 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: March 18, 1998

BANK ONE, WEST VIRGINIA, NATIONAL ASSOCIATION, as Registrar

By: /s/ Mark E. Park
Its Authorized Officer

WITNESS my signature this 18th day of March, 1998.

BANK ONE, WEST VIRGINIA, NATIONAL ASSOCIATION

By Joanne Mullins
Its Senior Trust Officer

Dennis R. Vaughan, Jr.
James W. Withrow

**VAUGHAN & WITHROW**
*Attorneys and Counsellors at Law*
Suite 200 Capitol Centre
232 Capitol Street
Charleston, West Virginia 25301

Telephone (304) 342-3900
Fax (304) 344-2386

March 18, 1998

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

The City of Beckley
P. O. Drawer AJ
Beckley, WV 25802

Re: The City of Beckley, West Virginia, Sewerage System Revenue Bonds, Series 1998 A

Gentlemen:

We are Bond Counsel to The City of Beckley (the "City"), a municipal corporation created under the laws of the State of West Virginia.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated January 29, 1998 (the "Loan Agreement") among the City, the West Virginia Water Development Authority (the "Authority") and the West Virginia Division of Environmental Protection (the "DEP") and (ii) the issuance of a series of revenue bonds of the City, denoted as Sewerage System Revenue Bonds, Series 1998 A, dated March 9, 1998 (the "Series 1998 A Bonds"), issued pursuant to an Ordinance enacted by the Council of the City on November 25, 1997, effective on December 9, 1997, as amended and supplemented by a Supplemental Resolution adopted on February 24, 1998 (the "Ordinance").

The Series 1998 A Bonds are in the aggregate principal amount of $11,000,000.00, issued in the form of one bond, registered in the name of the West Virginia Water Development Authority, as to principal and interest, with interest payable September 1, December 1, March 1 and June 1 of each year, beginning June 1, 2000, all as set forth in the Series 1998 A Bonds. The Series 1998 A 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.

The Series 1998 A Bonds are issued for the purpose of providing funds to pay the costs of the acquisition and construction of certain extensions, improvements and betterments to the public sewerage system (the "System") for the City and paying the costs of issuance thereof.

We have also examined the applicable provisions of Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), under which the Series 1998 A Bonds are issued.

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 City and is a valid and binding special obligation of the City enforceable in accordance with its terms.

2. The Loan Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to adversely affect the rights of the Authority or the DEP or diminish the obligations of the City without the consent of the Authority and the DEP.

3. The City is a duly organized and presently existing municipal corporation, with full power and authority to operate and maintain the System referred to in the Ordinance and the Loan Agreement, to acquire and construct the Project and to issue and sell the Series 1998 A Bonds, all under the Ordinance, the Act and other applicable provisions of law.

4. The City has legally and effectively enacted the Ordinance and all other necessary actions and certifications in connection with the issuance and sale of the Series 1998 A Bonds. The Ordinance contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Series 1998 A Bonds are valid and legally enforceable special obligations of the City, payable from the net revenues of the System referred to in the Ordinance and secured by a first lien on and pledge of the net revenues of said System, which first lien is shared with the City's Series 1995 A Bonds in the original principal amount of $3,095,000, all in accordance with the terms of the Series 1998 A Bonds and the Act and have been duly issued and delivered to the Authority.

6. The City has reserved the right to issue additional bonds ranking on a parity with the Series 1998 A Bonds, as provided in the Ordinance.

7. The interest on the Series 1998 A Bonds is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, it should be noted with respect to corporations, (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on such corporations. The opinion set forth above is subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986, as amended, that must be satisfied subsequent to the issuance of the Series 1998 A Bonds in order that the interest thereon be (or continue to be) excludable from gross income for federal income tax purposes. Failure to comply with such covenants and representations could cause the interest on the Series 1998 A Bonds to be so included in gross income retroactive to the date of issuance. We express no opinion regarding other federal tax consequences with respect to the Series 1998 A Bonds.

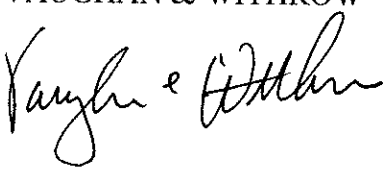
8. The Series 1998 A Bonds and the interest thereon are, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

The rights of the owners of the Series 1998 A Bonds and the enforceability of the Series 1998 A Bonds and the Ordinance may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors rights heretofore or hereafter enacted to the extent constitutionally applicable, and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Series 1998 A 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 & WITHROW



CITY OF
BECKLEY

DRAWER AJ BECKLEY, WEST VIRGINIA 25802-2832

MARK W. MATKOVICH
City Attorney

Phone 304/256-1750

March 18, 1998

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

RE: $11,000,000 The City of Beckley, Sewerage System Revenue Bonds, Series 1998 A

Gentlemen:

I am City Attorney for The City of Beckley, West Virginia (the "City"), in connection with the issuance of the City's $11,000,000 in aggregate principal amount Sewerage System Revenue Bonds, Series 1998 A (the "Bonds").

I have reviewed copies of the approving opinion of Vaughan & Withrow, as bond counsel, the Loan Agreement by and among, the West Virginia Water Development Authority (the "Authority"), the West Virginia Division of Environmental Protection and the City dated January 29, 1998, and the Ordinance enacted by the City Council on November 25, 1997, as amended and supplemented by a Supplemental Resolution adopted February 24, 1998, relating to the Bonds. All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Ordinance.

I am of the opinion that:

1. The Loan Agreement has been duly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding agreement of the City in accordance with its terms.

2. The Mayor and Recorder of the City and the members of the Council are the duly and properly elected or appointed members and are thereby authorized to act on behalf of the City.

3. The Ordinance has been duly enacted by the Council of the City, is in full force and effect and no further action of the City is required for its continued validity.

4. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by 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 City's part a breach of or default under any agreement or other instrument to which the City is a party or any existing law, regulation, court order or consent decree to which the City is subject.

5. The City has received all permits, licenses, approvals and authorizations necessary for 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, approval from the West Virginia Infrastructure and Jobs Development Council, and the receipt of all requisite orders and approvals from the Public Service Commission of West Virginia, and 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, and the appeal period from orders, if any, has expired. The Public Service Commission of West Virginia has issued a certificate of convenience and necessity approving the issuance of the Bonds and the acquisition and construction of the Project, and no party, except the City has any right to appeal such order.

6. To the best of my knowledge after due inquiry, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or, to my knowledge, threatened against or affecting the City (or, to my knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement or the Ordinance or the validity of or security for the Bonds.

All counsel to this transaction may rely upon the foregoing opinion as if specifically addressed to them.

Very truly yours,

Mark Matkovich

# CITY OF BECKLEY

DRAWER AJ BECKLEY, WEST VIRGINIA 25802-2832

MARK W. MATKOVICH
City Attorney

Phone 304/256-1750


March 25, 1998

Water Development Authority
State of West Virginia
180 Association Drive
Charleston, West Virginia 25311-1571

Jim Withrow, Esquire
Vaughan & Withrow
Attorneys at Law
232 Capitol Street
Charleston, West Virginia 25325

Samme Gee, Esquire
Jackson & Kelly
Attorneys at Law
P. O. Box 553
Charleston, West Virginia 25064

RE: City of Beckley Sanitary Board
Hayslett Construction Company Contract

Dear Ladies and Gentlemen:

As the duly authorized attorney for the owner, I have reviewed the workers' compensation certificate, insurance certificates, surety bonds, and relevant portions of sample insurance policies to be issued relating to the construction contract between the City of Beckley Sanitary Board and Hayslett Construction Company.

I have also reviewed certain certificates and powers of attorney from Friedlander Insurance Company representing that Richard Higginbotham is an authorized agent for USF&G and Fidelity and Deposit Company of Maryland and authorized to duly execute said insurance policies and surety bonds wherein said execution shall be legally binding. Based upon that review, the surety bonds and insurance policies issued will conform to the requirements of the construction contract between Hayslett Construction Company and the City of Beckley Sanitary Board.

Sincerely,

Mark Matkovich

Mark W. Matkovich

CITY ATTORNEY
CITY OF BECKLEY

MWM:llc

SCH
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

March 18, 1998

West Virginia Water
Development Authority
180 Association Drive
Charleston, WV 25311

The City of Beckley
P.O. Drawer AJ
Beckley, WV 25802

Re: The City of Beckley, Sewerage System
Revenue Bonds Series 1998 A

Ladies and Gentlemen:

We have been asked to determine if the Sewerage System of The City of Beckley will achieve sufficient revenue coverage of its existing and proposed debt service as set forth in the Loan Agreement dated January 29, 1998, by and between the City and the West Virginia Water Development Authority, and the West Virginia Division of Environmental Protection, and whether such revenues meet the requirements for the issuance of parity bonds set forth in the ordinance authorizing the issuance of the City's Series 1995 A Bonds. Said Loan Agreement and Section 6.09 of the Ordinance passed by the City Council on November 25, 1997, requires, so long as the City's Series 1995 A Bonds are outstanding, the revenues derived from the Sewerage System will always be sufficient to provide revenues in each Fiscal Year to pay, as the same shall become due, the necessary expenses, repairs (including replacement), maintenance and operation of said Sewer System, and leave a balance each year equal to at least 120% of the maximum amount required in any year for the payment of the principal of and interest on the Series 1998 A Bonds, and any obligations secured by a lien superior to or on a parity with such bonds, including the City's Series 1995 A Bonds.

The bond ordinance authorizing the issuance of the Series 1995 A Bonds provides that no parity bonds shall be issued unless 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 such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, shall not be less than 120% 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.

In calculating the required coverage, we have assumed that the proposed bonds will conform to the terms set forth in the Loan Agreement and Ordinance.

Based on the foregoing, and upon the current rate structure for the City's Sewerage System and the estimates and projections made by the City concerning the operations maintenance costs for the System, we certify that the annual revenues of The City of Beckley Sewerage System will be sufficient to provide revenues in each Fiscal Year to pay, as the same shall become due, the necessary expenses, repairs, maintenance and operation of said Sewerage System, and leave balance each year equal to at least 120% of the maximum amount required in any year for the payment of the principal of and interest on the Series 1995 A Bonds and the Series 1998 A Bonds, and any obligations secured by a lien superior to or on a parity with such bonds, and that the net revenues of the System for 12 of the last 18 months prior to the issuance of the Series 1998 A Bonds is not less than 120% of the maximum debt service in any succeeding year on the Series 1995 A Bonds and the Series 1998 A Bonds and meets the parity test requirements for the Series 1995 A Bonds.

Very truly yours,

Smith Cochran & Hicks

Smith, Cochran & Hicks

SCH

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF BECKLEY
SEWERAGE SYSTEM REVENUE BOND
SERIES 1998 A

No. AR-1

$11,000,000.00

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 Eleven Million and 00/100 Dollars ($11,000,000.00), 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 on March 1, 2000, in installments on March 1, June 1, September 1 and December 1 of each year, beginning June 1, 2000, as set forth on the "Debt Service Schedule" attached as Schedule Y hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Schedule Y.

The interest rate on each installment shall run from March 1, 2000, and shall be payable on March 1, June 1, September 1 and December 1 of each year, beginning June 1, 2000, 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 Bank One, West Virginia, National Association, Charleston, 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 January 29, 1998.

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"); 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 an Ordinance and Supplemental Resolution, duly enacted and adopted, respectively, by the Issuer on November 25, 1997, and February 24, 1998, (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 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 THE SERIES 1998 A 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, moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1998 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 1998 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, so long as the Series 1995 A Bonds are outstanding, to leave a balance each year

equal to at least 120% of the maximum amount required in any year for principal of and interest on the Series 1998 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 1998 A Bonds or the Series 1995 A Bonds. When the Series 1995 A Bonds are no longer outstanding, the rates and charges for the use of the System and the services rendered thereby, 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 1998 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 1998 A Bonds, provided however, that so long as there exists in the Series 1998 A Bonds Reserve Account an amount at least equal to 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, and in the respective reserve accounts established for any other obligations outstanding prior to or on a parity with the Series 1998 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 March 18, 1998.

[SEAL]

THE CITY OF BECKLEY

By: _____
Mayor

ATTEST:

_____
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of The City of Beckley Sewerage System Revenue Bonds, Series 1998 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: March 18, 1998

BANK ONE, WEST VIRGINIA, NATIONAL ASSOCIATION, as Registrar

By: _____
Client Service 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 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:

_____

EXHIBIT A

SCHEDULE OF ADVANCES

| Amount | Date |
| --- | --- |
| $ 960,915 | 3/18/98 |

# SCHEDULE Y

## DEBT SERVICE SCHEDULE

| Date | Principal | Coupon | Interest | Total P+I |
|---|---|---|---|---|
| 3/01/2000 | - | - | - | - |
| 6/01/2000 | 112,167.00 | 2.000% | 55,000.00 | 167,167.00 |
| 9/01/2000 | 112,728.00 | 2.000% | 54,439.17 | 167,167.17 |
| 12/01/2000 | 113,292.00 | 2.000% | 53,875.83 | 167,167.83 |
| 3/01/2001 | 113,858.00 | 2.000% | 53,309.07 | 167,167.07 |
| 6/01/2001 | 114,428.00 | 2.000% | 52,739.78 | 167,167.78 |
| 9/01/2001 | 115,000.00 | 2.000% | 52,167.64 | 167,167.64 |
| 12/01/2001 | 115,575.00 | 2.000% | 51,592.64 | 167,167.64 |
| 3/01/2002 | 116,153.00 | 2.000% | 51,014.76 | 167,167.76 |
| 6/01/2002 | 116,733.00 | 2.000% | 50,434.00 | 167,167.00 |
| 9/01/2002 | 117,317.00 | 2.000% | 49,850.33 | 167,167.33 |
| 12/01/2002 | 117,904.00 | 2.000% | 49,263.75 | 167,167.75 |
| 3/01/2003 | 118,493.00 | 2.000% | 48,674.22 | 167,167.22 |
| 6/01/2003 | 119,086.00 | 2.000% | 48,081.76 | 167,167.76 |
| 9/01/2003 | 119,681.00 | 2.000% | 47,486.33 | 167,167.33 |
| 12/01/2003 | 120,279.00 | 2.000% | 46,887.93 | 167,166.93 |
| 3/01/2004 | 120,881.00 | 2.000% | 46,286.53 | 167,167.53 |
| 6/01/2004 | 121,485.00 | 2.000% | 45,682.13 | 167,167.13 |
| 9/01/2004 | 122,093.00 | 2.000% | 45,074.70 | 167,167.70 |
| 12/01/2004 | 122,703.00 | 2.000% | 44,464.24 | 167,167.24 |
| 3/01/2005 | 123,317.00 | 2.000% | 43,850.72 | 167,167.72 |
| 6/01/2005 | 123,933.00 | 2.000% | 43,234.14 | 167,167.14 |
| 9/01/2005 | 124,553.00 | 2.000% | 42,614.47 | 167,167.47 |
| 12/01/2005 | 125,176.00 | 2.000% | 41,991.71 | 167,167.71 |
| 3/01/2006 | 125,802.00 | 2.000% | 41,365.83 | 167,167.83 |
| 6/01/2006 | 126,431.00 | 2.000% | 40,736.82 | 167,167.82 |
| 9/01/2006 | 127,063.00 | 2.000% | 40,104.66 | 167,167.66 |
| 12/01/2006 | 127,698.00 | 2.000% | 39,469.35 | 167,167.35 |
| 3/01/2007 | 128,337.00 | 2.000% | 38,830.86 | 167,167.86 |
| 6/01/2007 | 128,978.00 | 2.000% | 38,189.17 | 167,167.17 |
| 9/01/2007 | 129,623.00 | 2.000% | 37,544.28 | 167,167.28 |
| 12/01/2007 | 130,271.00 | 2.000% | 36,896.17 | 167,167.17 |
| 3/01/2008 | 130,923.00 | 2.000% | 36,244.81 | 167,167.81 |
| 6/01/2008 | 131,577.00 | 2.000% | 35,590.23 | 167,167.23 |
| 9/01/2008 | 132,235.00 | 2.000% | 34,932.31 | 167,167.31 |
| 12/01/2008 | 132,896.00 | 2.000% | 34,271.14 | 167,167.14 |
| 3/01/2009 | 133,561.00 | 2.000% | 33,606.66 | 167,167.66 |
| 6/01/2009 | 134,229.00 | 2.000% | 32,938.85 | 167,167.85 |
| 9/01/2009 | 134,900.00 | 2.000% | 32,267.71 | 167,167.71 |
| 12/01/2009 | 135,574.00 | 2.000% | 31,593.21 | 167,167.21 |
| 3/01/2010 | 136,252.00 | 2.000% | 30,915.34 | 167,167.34 |
| 6/01/2010 | 136,933.00 | 2.000% | 30,234.08 | 167,167.08 |
| 9/01/2010 | 137,618.00 | 2.000% | 29,549.41 | 167,167.41 |
| 12/01/2010 | 138,306.00 | 2.000% | 28,861.32 | 167,167.32 |
| 6/01/2011 | 139,693.00 | 2.000% | 27,474.80 | 167,167.80 |
| 9/01/2011 | 140,391.00 | 2.000% | 26,776.34 | 167,167.34 |
| 12/01/2011 | 141,093.00 | 2.000% | 26,074.38 | 167,167.38 |
| 3/01/2012 | 141,798.00 | 2.000% | 25,368.92 | 167,166.92 |
| 6/01/2012 | 142,507.00 | 2.000% | 24,659.93 | 167,166.93 |
| 9/01/2012 | 143,220.00 | 2.000% | 23,947.39 | 167,167.39 |
| 12/01/2012 | 143,936.00 | 2.000% | 23,231.29 | 167,167.29 |
| 3/01/2013 | 144,656.00 | 2.000% | 22,511.61 | 167,167.61 |
| 6/01/2013 | 145,379.00 | 2.000% | 21,788.33 | 167,167.33 |
| 9/01/2013 | 146,106.00 | 2.000% | 21,061.44 | 167,167.44 |
| 12/01/2013 | 146,836.00 | 2.000% | 20,330.91 | 167,166.91 |
| 3/01/2014 | 147,571.00 | 2.000% | 19,596.73 | 167,167.73 |
| 6/01/2014 | 148,308.00 | 2.000% | 18,858.87 | 167,166.87 |
| 9/01/2014 | 149,050.00 | 2.000% | 18,117.33 | 167,167.33 |
| 12/01/2014 | 149,795.00 | 2.000% | 17,372.08 | 167,167.08 |
| 3/01/2015 | 150,544.00 | 2.000% | 16,623.11 | 167,167.11 |
| 6/01/2015 | 151,297.00 | 2.000% | 15,870.39 | 167,167.39 |
| 9/01/2015 | 152,053.00 | 2.000% | 15,113.90 | 167,166.90 |
| 12/01/2015 | 152,814.00 | 2.000% | 14,353.64 | 167,167.64 |
| 3/01/2016 | 153,578.00 | 2.000% | 13,589.57 | 167,167.57 |
| 6/01/2016 | 154,346.00 | 2.000% | 12,821.68 | 167,167.68 |
| 9/01/2016 | 155,117.00 | 2.000% | 12,049.95 | 167,166.95 |
| 12/01/2016 | 155,893.00 | 2.000% | 11,274.26 | 167,167.26 |
| 3/01/2017 | 156,672.00 | 2.000% | 10,494.90 | 167,166.90 |
| 6/01/2017 | 157,456.00 | 2.000% | 9,711.84 | 167,167.84 |
| 9/01/2017 | 158,243.00 | 2.000% | 8,924.26 | 167,167.26 |
| 12/01/2017 | 159,034.00 | 2.000% | 8,133.04 | 167,167.04 |
| 3/01/2018 | 159,830.00 | 2.000% | 7,337.87 | 167,167.87 |
| 6/01/2018 | 160,629.00 | 2.000% | 6,538.72 | 167,167.72 |
| 9/01/2018 | 161,432.00 | 2.000% | 5,735.58 | 167,167.58 |
| 12/01/2018 | 162,239.00 | 2.000% | 4,928.42 | 167,167.42 |
| 3/01/2019 | 163,050.00 | 2.000% | 4,117.22 | 167,167.22 |
| 6/01/2019 | 163,865.00 | 2.000% | 3,301.97 | 167,166.97 |
| 9/01/2019 | 164,685.00 | 2.000% | 2,482.65 | 167,167.65 |
| 12/01/2019 | 165,508.00 | 2.000% | 1,659.22 | 167,167.22 |
| 3/01/2020 | 166,335.00 | 2.000% | 831.68 | 167,167.68 |
| TOTAL | 11,000,000.00 | - | 2,373,391.55 | 13,373,391.55 * |

* Plus $14,833.70 one-percent administrative fee paid quarterly. Total fee paid over the life of the loan is $1,186,636.

STATE OF WEST VIRGINIA
WATER DEVELOPMENT AUTHORITY
1201 DUNBAR AVENUE
DUNBAR, WV 25064
Telephone (304) 558-3812
Telecopier (304) 558-0299

RECEIVED
MAY - 9 1995

May 5, 1995

The Honorable Emmett S. Pugh, III
Mayor, City of Beckley
Sanitary Board
301 South Heber Street
Beckley WV 25802-2826

PRELIMINARY APPLICATION -
CITY OF BECKLEY (SEWER PROJECT)

The West Virginia Infrastructure and Jobs Development Council (the "Council") has reviewed the Preliminary Application for the above-referenced project and has determined that the project is technically and financially feasible within the guidelines of the Act. (See attached Sewer Assessment Committee comments.)

The Council recommends that the City of Beckley and the North Beckley PSD continue to study and consider consolidation. Notwithstanding that the communities have not reached a final decision concerning consolidation of their respective systems, the Council recommends that the City of Beckley pursue a State Revolving Fund Loan of $8,702,653 and an Advance Assistance Grant of $101,247 from the Division of Environmental Protection and that local funds of $40,000 be provided to complete the financing of the project.

If you have any questions concerning this decision, please contact Daniel Yonkosky, Director of the Water Development Authority, who serves as chairman of the Council's Funding Committee.

Daniel B. Yonkosky
for RUSSELL L. ISAACS, CHAIRMAN
WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

db

c Mike Johnson, Division of Environmental Protection
Region I Planning and Development Council

SDEAD

CERTIFICATE OF CONSULTING ENGINEER

THE CITY OF BECKLEY

SEWERAGE SYSTEM REVENUE BONDS SERIES 1998 A

I, Robert G. Belcher, Registered Professional Engineer, West Virginia License No. 13093, of Chapman Technical Group, Consulting Engineers, St. Albans, West Virginia, hereby certify that my firm is the engineer for the acquisition and construction of certain additions, betterments and improvements to the existing sanitary sewerage system of the City of Beckley, (the "Issuer") to be constructed in Raleigh County, West Virginia, which construction and acquisition are being financed permanently, in part, by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meanings set forth in the Ordinance enacted by the Council of the Issuer on November 25, 1997, effective December 9, 1997, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Division of Environmental Protection ("DEP"), dated January 29, 1998.

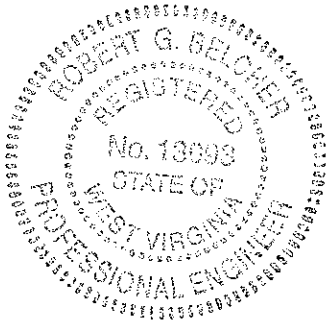
1. The Bonds are being issued for the purpose of providing funds to pay the costs of certain extensions, improvements and betterments to the City's sanitary sewer system, and paying the costs of issuance thereof, which extensions, improvements and betterments consist of upgrading the existing Wastewater Treatment Plant, upgrading the Whitestick Pump Station, replacing the existing Pinecrest Interceptor line and other various upgrades and repairs (the "Project").

2. The undersigned hereby certifies to the best of his knowledge, information and belief that (i) the Project will be constructed in general accordance with the approved plans,

specifications and designs prepared by my firm, including any subsequently approved change orders, and as described in the application submitted to the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least twenty two years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application, and based upon the certification of Mark Matkovich, City Attorney, all contractors have made or will make the required provisions for all insurance policies and payment and performance bonds and that such insurance policies or binders and such bonds have been or will be verified by the City Attorney for accuracy, (iv) the Issuer has obtained all permits required by the laws of the State of West Virginia and the federal government necessary for the construction of the Project, (v) based upon the certification of Smith, Cochran & Hicks, CPAs, the rates and charges for the System as adopted by the Council of the Issuer are sufficient to comply with the provisions of Subsection 4.1(b) of the Loan Agreement, (vi) the net proceeds of the Bonds, together with all other moneys on deposit or to be deposited simultaneously and irrevocably pledged thereto, are sufficient to pay the costs of construction of the Project as set forth in the Application, and (vii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

Witness my signature on this 18th day of March, 1998.

CHAPMAN TECHNICAL GROUP




By Robert G. Belcher

Robert G. Belcher
West Virginia License No. 13093