The City of Charleston
Sewerage System Revenue Bonds, Series 2004 A

Date of Closing: March 23, 2004

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

Closing Date: March 23, 2004

TRANSCRIPT OF PROCEEDINGS

DOCUMENT NO.	DESCRIPTION	INDEX NO.
	I. Organizational Documents	
1.1	Certified copy of Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended.	1
1.2	Charter.	2
1.3	Oaths of Office of Mayor, City Clerk and Council Members.	3
1.4	Ordinance Creating Sanitary Board.	4
1.5	Oaths of Office of Sanitary Board Members.	5
	II. Authorizing Documents	
2.1	Public Service Commission Orders.	6
2.2	Infrastructure Council Approval Letters.	7
2.3	Loan Agreement.	8
2.4	Tariff.	9
2.5	Petition of Sanitary Board.	10
2.6	Bond Ordinance.	11
2.7	Supplemental Resolution.	12

2.8	Minutes of Council Meetings regarding All Readings and Public Hearing of the Bond Ordinance and Adoption of the Supplemental Resolution.	13
2.9	Affidavit of Publication of the Notice of Public Hearing and Abstract of Bond Ordinance.	14
2.10	Specimen Bond.	15
2.11	Bond Register.	16
2.12	WDA Consent to Issuance of Parity Bonds.	17

III. Certificates, Receipts and Other Documents

3.1	General Certificate.	18
3.2	Certificate as to Arbitrage.	19
3.3	Certificate of City Clerk as to Truth and Accuracy of Documents Delivered.	20
3.4	Certificate of Consulting Engineer.	21
3.5	Certificate of Accountant.	22
3.6	Receipt for Bonds.	23
3.7	Receipt for Bond Proceeds.	24
3.8	Request and Authorization to Authenticate and Deliver the Bonds.	25
3.9	Registrar's Agreement.	26
3.10	Certificate of Registration of Bonds.	27
3.11	Acceptance of Appointment As Depository Bank.	28
3.12	Municipal Bond Commission New Issue Report Form.	29

3.13	NPDES Permit.	30
3.14	IRS Information Return (Form 8038-G) and Letter of Transmittal.	31
3.15	Evidence of Insurance.	32
3.16	Closing Memorandum.	33

IV. Opinions

4.1	Opinion of Jackson Kelly PLLC, Bond Counsel.	34
4.2	Opinion of City Attorney.	35
4.3	Opinion of PSC Counsel.	36
4.4	Final Title Opinion.	37

The closing of the sale of The City of Charleston Sewerage System Revenue Bonds, Series 2004 A, will take place at the office of the West Virginia Water Development Authority in Charleston, West Virginia, at 10:00 a.m., prevailing time on March 23, 2004. No transaction shall be deemed to have been completed and no documents shall be deemed to have been delivered unless or until all transactions are complete and all documents delivered.

State of West Virginia

Certificate

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

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

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

March 16, 2004

Secretary of State

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

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

ARTICLE 13.

SEWAGE WORKS AND STORMWATER WORKS.

Sec.
16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.
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. Government units subject to established rates.
16-13-18. Supervision of works by sanitary 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.

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 143 read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 16-13-8. Cost of works.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of thirty days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities shall be delinquent until such time as all rates, fees and charges are fully paid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ceding "term
"Such mayor
leted "such"
In genera
this article
municipal c
construct, eq
systems, to
and manage
supervision
appointed by
such board
them and to
or bettermer
dient. State
145 W. Va. 6
Construc
between the
§§ 24-1-1, 2
sons, the pr
ate to repeal
City of Whee
S.E.2d 763 (
Adjoinin
of its sanita
the state of
the power ir
lature to a
plant outsid
be legally ef
rate its san
incidental r
Bernard v. C
S.E. 298 (19
Board m
corporation
ment, the n
the option o
city manag

§ 16-13

Every s
to be pu
provision
and the
Such stat
ditures o
which all
was issue
issued, a
received
the debt
contracte
and the
prepared
the fiscal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As to receivers, see Rule 66.

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

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

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

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

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

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

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

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

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

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

§ 16-13-22b.

When determi
necessary for th
rized to enter in
with any indust
municipality of s
caused by discha
the payment per
amounts at leas
compensate the
principal and in
sewerage faciliti

§ 16-13-22c.

Any municipa
pay or discharg
interest thereon
provisions in th
cable in the autl
their terms and
aspects of the b

§ 16-13-22d.

Notwithstand
municipality au
aid in the abate
provide in the o
indenture perta
may thereafter
and in the manr
respect to the p
such other bond

§ 16-13-22e.

Any such mu
persons, firms
facilities and pr
period of time a
between such
municipality sh
issuance of bon
that such cont
municipality as
and unpaid. (19

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

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

§ 16-13-22c. Refunding bonds.

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

§ 16-13-22d. Subordination of bonds.

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

§ 16-13-22e. Operating contract.

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

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

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

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

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

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

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

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

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

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

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

(f) The manner
hereunder may be
of a default in the
performance of an
and terms upon w
the maturity of su

(g) Budgets for
sewerage system
expenditures for
repeal or amendi
consulting engine

(h) The amount
or stormwater sys
proceeds of any in

(i) The keeping
audit and inspecti
hereunder or thei
accountants desig

(j) Such other
desirable for the
standing that ot
being the intentio
and all covenants
ability for bonds
covenants or agr
similar services
complete power
holder of bonds is
state of West Vir

Effect of amend
2001, c. 212, effective
"the" for "such" t
stormwater system"
tem" throughout, su

§ 16-13-23. A
e
n
u

This article, s
authority for the
nance, operatio
issuance and s
construed as a
financing thereo
respect to the co

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

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

PART I.

THE CHARTER.

Editor's note.--According to the West Virginia Blue Book, 1973, page 820, the community which is now Charleston was "originally chartered in 1794, as Charles Town-----, [so] named by George Clendenin, one of the earliest settlers, for his father, Charles Clendenin." It became "Charleston" by Acts of Assembly 1817-18, ch. CXV, p. 160 et seq., passed January 19, 1818, which provided, in pertinent part, that "the town of Charles Town in the county of Kanawha, as the same has been heretofore laid off under the several acts of Assembly for that purpose--- shall be, and the same is hereby erected into a town corporate, to be known and distinguished by the name of 'Charleston'-----." These Acts were, of course, those of the general assembly of the Commonwealth of Virginia. The first Act of the West Virginia legislature amending the town Charter was that of 1867, ch. 127, p. 155; and Charleston became a city by Acts 1875, ch. 39, p. 47, which provided, inter alia, for a common council consisting of a mayor, recorder and nine councilmen, a body politic by name "The City of Charleston."

The present charter, herein set out, is a legislative charter, Acts 1929 (Muni. Ch.), ch. 4 as amended; the historical citations following each section indicating the derivation thereof and amendments, if any. The 1929 charter act was approved by the governor on March 6, 1929, and became effective upon passage. Many section catchlines have been changed by the editors to more clearly and more fully indicate the contents of the sections, and are not to be regarded as official; years have been changed from words to numerals; a uniform system of capitalization has been adopted; in some sections italicized words are printed in Roman; and words and figures in brackets have been supplied by the editors for the purpose of clarity.

For a list of home rule ordinances amendatory of the Charter, see table 3, in part III of this Code.

The legislature, in its 1969 revision and con-

solidation of chapters 8 and 8A of the Code of West Virginia into a new chapter 8, recognized, in section 8-1-6, "that when the provisions of existing special legislative charters are compared with and are considered in the light of the provisions of this chapter, [i.e., the new chapter 8], there are five basic possibilities as to the relationship between such charter provisions and the provisions of this chapter, namely: (1) As to any particular charter provisions, such charter provisions may be inconsistent or in conflict with the pertinent provisions of this chapter; (2) although relating to the same subject matter and although not inconsistent or in conflict with any provisions of this chapter, certain charter provisions may be sufficiently different from pertinent provisions of this chapter as to indicate, as a matter of practical construction, that either the charter provisions or the provisions of this chapter, but not both, should be applicable; (3) although varying in certain respects, certain charter provisions may be similar to and in essential harmony with corresponding provisions of this chapter; (4) as to any particular charter provisions, there may be no counterpart of such provisions in this chapter; and (5) as to any provisions of this chapter, there may be no counterpart charter provisions."

Section 8-1-6, therefore, sets forth certain rules to be applied, in addition to the usual and ordinary rules of statutory construction, with respect to construction and applicability of legislative charters, and it is suggested that users of this city Code refer to W. Va. Code, § 8-1-6, in determining the present construction and applicability of any portion of the Charleston Charter to any given situation.

For state law as to revising or amending a city Charter, see W. Va. Code, §§ 8-4-7, 8-4-8.

Bill 497 passed 8-17-98 creating a Stormwater Management Operation

§ 1. Charleston made a city corporate and body politic.
§ 2. Corporate limits.
§ 3. Twenty wards established.
§ 4. Municipal authorities; elective officers and qualifications for holding office.
§ 5. Officers in addition to elective officers; salaries.

§ 6. Corporate power vested in council.
§ 7. Enumeration of numerous miscellaneous powers of council; jurisdiction beyond corporate limits.
§ 7-a. Authority of council, municipal judge, circuit and common pleas courts and judges relating to city licenses.
§ 7-b. Regulation of operation of motor vehicles.
§ 8. Persons entitled to vote.
§ 9. Boundaries of voting precincts; registration books; registering voters; transfer from one precinct to another; duties of county court.
§ 9-a. Special registrars; compensation of county court and clerk; delivery of registration books to city clerk; return to clerk of county court.
§ 10. Nomination of candidates.
§ 11. When county and city voting precincts to be the same; how elections to be held.
§ 12. Law governing preparation of ballot and method of voting.
§ 13. The council--Title; how constituted.
§ 14. Same--Qualifications; vacancies.
§ 15. Same--Mayor; clerk; president pro tempore.
§ 16. Same--Representation of new ward.
§ 17. Same--Exercise of legislative functions; information, etc., from officers and employees.
§ 18. Audit of books and accounts.
§ 19. Removal of officers by council or by circuit court of Kanawha County or by officers having appointment authority.
§ 20. Rules and regulations for government of council; record of meetings.
§ 21. Regular meetings of council.
§ 22. Special meetings of council.
§ 23. Council procedure for contested elections, and right of appeal to circuit court.
§ 24. Oath of officers; how and within what time officers must qualify; failure to qualify vacates office.
§ 25. Bonds of officers and employees; record of bonds.
§ 26. Quorum of council; compelling attendance of absent members.
§ 27. Voting in council and recording of votes.
§ 28. City clerk is ex officio clerk of the council; council minutes and admissibility thereof in evidence.
§ 29. Holding two offices. (Within the City)
§ 30. Failure of mayor or other officer to make appointments.
§ 31. Vacancy in office of mayor or treasurer; vacancy in office of appointive officer; officers hold office until successors qualified, unless previously removed.
§ 32. Corruption in office.
§ 33. Power of council to compel attendance of witnesses and production of records, administer oaths and punish for contempt.
§ 34. Absence or inability of certain officers to perform duties.

§ 35. Election and term of office of elective officers; salary of mayor; appointments by mayor; appointment of city clerk; appointments by manager; term of appointive officers; duties of mayor and city solicitor; salary of solicitor; fees.
§ 36. Appointment, compensation, powers and duties of the manager.
§ 37. Franchises--Granting; requirements and limitations governing; vote of council required.
§ 38. Same--Advertisement of application; submission to voters.
§ 39. Committees of council; adjournment of council meetings; postponement of announcement of vote.
§ 40. Style of ordinances.
§ 41. Passage of ordinances; revision, reenactment or amendment; effective date; publication of caption or title; resolutions and orders.
§ 42. Ordinances to be spread on records of council; "ordinance record"; code of ordinances.
§ 43. Officers conservators of the peace.
§ 44. Powers and duties of municipal judge; maximum imprisonment for violation of ordinance; appeal; expense of maintaining persons committed to county jail.
§ 45. Qualifications of municipal judge; not to appear as counsel in criminal cases; absence or inability to perform duties; bond.
§ 46. Bail.
§ 47. Authority of council, manager and police officers relating to nuisances; duties and responsibilities of owners and occupants of property; enforcement.
§ 48. Connection with sewer system.
§ 49. Construction of sidewalks, curbs and gutters; duty of county clerk to record assessments.
§ 50. Annual estimate for tax levy.
§ 51. Authority to levy and collect taxes; limit of taxation.
§ 52. Collection of taxes.
§ 53. Powers of collector.
§ 54. Distress for collection of taxes.
§ 55. Lien on real estate for taxes--Established; enforcement by suit in court of record; priority of lien.
§ 56. Same--Enforcement by tax sale.
§ 57. Limitation on authority of county to tax persons and property within city for streets, education or poor outside city limits; control of streets and schools within city; joint ownership of bridges.
§ 58. Depositories.
§ 59. Bonds--Authority to issue; purposes; interest; limit; taxation to pay interest and principal.
§ 59-a. Same--For improvement of streets.
§ 60. Same--In anticipation of special assessments for street improvements or sewer construction; limitation on indebtedness.
§ 61. Contracts for improvement of streets; assessment of cost.
§ 62. Sewerage assessments against owners of abutting property; requiring connection with sewer; including cost of drains in cost of street improvement.

§ 62-a. Construction of sewer systems or common, lateral, branch, trunk or combined sewers.
§ 63. Resolution declaring necessity for street improvement--Required: procedure for adoption.
§ 64. Same--Service on property owners of notice of passage.
§ 65. City executive committees of political parties.
§ 66. Bonds to pay city's cost of improvement of streets, etc.
§ 67. Hearing of property owners affected by improvements: ordinance concerning improvement.
§ 68. Special assessments when several kinds of materials have been named in ordinance providing for improvement.
§ 69. Vote of council required for public improvement: petition by property owners.
§ 70. Assessment when public improvement passes through or by public property or property of institution.
§ 71. What cost of improvement shall include.
§ 72. Filing statement as prerequisite to action for damages arising out of improvement.
§ 73. Liberal construction of proceedings with respect to improvements.
§ 74. Election and three-fifths vote required for issuance of bonds: regulations governing.
§ 75. Authority of council to lay special levies in years 1929 and 1930 for special purposes.
§ 76. Power of council as to public buildings, hospitals, libraries, etc.
§§ 77, 78 and 79. Fire department civil service.
§ 80. Political activities by members of fire or police departments.
§ 81. Service of notice, summons, warrant, etc.
§ 82. Contested elections for council.
§ 83. Duties of city clerk as to municipal elections.
§ 84. Valid ordinances and regulations passed on or before May 1, 1915, not inconsistent with this Charter, to remain in effect until repealed.
§ 85. Powers and duties of policemen.
§ 86. Compensation of members of council; absence from meetings.
§ 87. Reports by manager to council; reports by officers and employees under supervision of manager.
§ 88. Additional method for paving streets: assessment certificates.
§ 88-a. Void, irregular or omitted assessments.
§ 88-b. Assessment certificates to pay for cost of construction of sewers and sewer systems.
§ 88-c. Subdividing abutting land for purpose of making assessments.
§ 89. Initiation of ordinances by voters.
§ 90. Reconsideration of ordinance protested by petition; submission of ordinances to voters.
§ 91. Recall of officers.
§ 92. Signatures and affidavits to petitions filed under three preceding sections; form of submission of ordinance; all city elections to conform to state law.
§ 93. Additional method for construction of sidewalks; assessment certificates.

3/5 vote for bonds

§ 93-a. Transcript of property to be furnished by county assessor.
§ 94. Authority to issue warrants; vacancy in office of municipal judge.
§ 95. Statement of claim before action against city for damages for personal injury.
§ 96. Health commissioner.
§ 97. Police matron.
§ 98. Codification of ordinances.
§ 99. Cemeteries and burials.
§ 100. Building inspector.
§ 101. Power to buy, sell or exchange real estate.
§ 102. Zoning--Power of city.
§ 102-a. Same--Division of city into zoning districts.
§ 102-b. Same--Design of zoning regulations; considerations in making.
§ 102-c. Same--Establishment, enforcement and change of zoning regulations and boundaries of zoning districts; hearing.
§ 102-d. Same--Change or repeal of zoning regulations and boundaries; protests.
§ 102-e.¶1. Same--Zoning commission.
§ 102-e.¶2. Repeal of inconsistent laws.

Sec. 1. Charleston made a city corporate and body politic.

The inhabitants of all that part of the County of Kanawha included and centered within the limits hereafter prescribed in section two are hereby made a city corporate and body politic by the name of "The City of Charleston," and as such city it shall have perpetual succession and a common seal, and by that name it may sue and be sued, plead and be impleaded, and may purchase, hold, lease or sell real estate and personal property necessary to the discharge of its corporate duties, or needful or convenient for the good order, government and welfare of said corporation. (Acts 1929 (Muni. ch.), ch. 4, § 1.)

Sec. 2. Corporate limits.

The corporate territorial limits of the City of Charleston shall comprise all that part of the magisterial district of Charleston and all that part of the territory of the magisterial district of Loudon in the County of Kanawha and State of West Virginia, which is bounded and described as follows, to-wit:

Editor's note.--The remainder of this section, which describes by metes and bounds the city boundary as it existed on March 6, 1929, is omitted as obsolete due to annexation of territory and minor boundary adjustments since that date. For complete text of this section, see Acts 1929 (Muni. ch.), ch. 4, § 2. For current city boundary, see the official map of the city which, when completed and approved by the city council, will be placed on file in the office of the city clerk.

For state law as to change of municipal boun-

daries by annexation of territory, see W. Va. Code, §§ 8-6-1 through 8-6-5. As to decrease of corporate limits of municipalities, see W. Va. Code, §§ 8-7-1 through 8-7-4.

Sec. 3. Twenty wards established.

Editor's note.--This section, as initially enacted by the legislature by Acts 1929, (Muni. ch.), ch. 4, § 3, divided the city into seventeen wards. By Ordinance No. 308, amendatory of this section, enacted Nov. 10, 1958, and ratified at a special election held Dec. 13, 1958, the city was redivided into nineteen wards. Due to subsequent changes in population and the resulting necessity for more proportionate representation in the city council, the council on Sept. 19, 1966, by affirmative vote of more than two-thirds of the members, enacted Ord. No. 870, amendatory of this section, by redividing the city into eighteen wards, described by metes and bounds, subject to a referendum as provided in W. Va. Code, § 8-4-7; and at a special election on Nov. 8, 1966, held pursuant to prior notice duly published, a majority of the legal votes cast were in favor of the amendment, which thereupon became effective with the declaration by the council of the results of that election, all in conformity with the provisions of W. Va. Code, § 8-4-7. The text of this section, as so amended, is omitted as obsolete in some respects due to subsequent addition of territory, but it has been saved from repeal and is on file in the office of the city clerk. Another reason for omission of the text of this section was that Ordinance No. 1570, 7-1-74, directed the mayor to appoint two special committees, one to take a census of the city and the other, upon completion of such census, to prepare and submit to the council a report, with recommendations for the division of the city into wards and the number and boundaries thereof, the number of councilmen to represent each ward, and the number of councilmen at large, together with a proposed ordinance to effect such recommendations. Ordinance No. 3040, adopted on

Dec. 20, 1982, redivided the city into twenty wards, described by metes and bounds.

For current division of the city into wards and the boundaries thereof, see the official map of the city which, when completed and approved by the city council, will be placed on file in the office of the city clerk.

Sec. 4. Municipal authorities; elective officers and qualifications for holding office.

The municipal authorities of the City of Charleston shall consist of a mayor, city treasurer, municipal judge, and a member of the city council from each ward of the city, and six councilmen at large, who shall be elected by the qualified voters of such city, ~~and such officers shall for the assessment year preceding their respective elections as hereinafter provided, has been assessed with and paid taxes in the City of Charleston upon a valuation of at least one hundred dollars worth of real estate or personal property therein, and any person elected to any one of such offices who has not been assessed with and paid taxes on such amount of property shall not qualify or enter upon the performance of the duties thereof, but such office shall thereby become vacant and shall be filled by a qualified person as provided herein for other vacancies~~. (Acts 1929 (Muni. ch.), ch. 4, § 4; Ord. No. 870, § 2; 9-19-66; Ord. No. 1620, § 2; Ord. No. 3040, § 2.)

Editor's note.--The ordinance amendatory of this section of the Charter was enacted Sept. 19, 1966, by affirmative vote of more than two-thirds of the members of the city council; and it was ratified by a majority of the legal votes cast at a special election on Nov. 8, 1966, which was held pursuant to prior notice duly published, all in conformity with the provisions of W. Va. Code, § 8-4-7.

Sec. 5. Officers in addition to elective officers; salaries.

In addition to the municipal authorities mentioned in section four of this act [this Charter], the city shall have a manager, city clerk, municipal court clerk, city auditor, collector, chief of police, city solicitor, assistant city solicitor, chief of fire department, engineer, health commissioner, building inspector, lockup keeper, humane officer or officers and such member of policemen as council by ordinance may direct. All the officers named in this and the

preceding sections shall be paid proper salaries which shall be fixed by the council, except as herein otherwise provided, and such salaries shall be within the limits provided for by this act. (Acts 1929 (Muni. ch.), ch. 4, § 5.)

For state law providing that, "notwithstanding any Charter provision to the contrary," the governing body of every municipality shall by ordinance fix the compensation of every munici-

pal officer and employee; provided, that the salary of an officer shall not be increased or diminished during his term of office, see W. Va. Code, § 8-5-12.

Sec. 6. Corporate power vested in council.

All the corporate power of said city shall be vested in and exercised by council or under its authority, except as otherwise provided in this act [this Charter]. (Acts 1929 (Muni. ch.), ch. 5, § 6.)

Sec. 7. Enumeration of numerous miscellaneous powers of council; jurisdiction beyond corporate limits.

The council of said city shall have, and is hereby granted power to have said city surveyed, to lay out, open, vacate, straighten, broaden, change grade of, grade, regrade, curb, widen, narrow, repair, pave and re-pave streets, alleys, roads, squares, plots, sidewalks and gutters for public use, and to alter, improve, embellish and ornament and light the same, and to construct and maintain public sewers and laterals, and shall, in all cases, have power and authority to assess upon and collect from the property benefited thereby, such part of the expense thereof as shall be fixed by ordinance, except as hereinafter provided, to have control of all streets, avenues, roads, alleys and grounds for public use in said city, and to regulate the use thereof and driving thereon, and to have the same kept free from obstruction, pollution or litter on or over them; to have the right to control all bridges within said city, and the traffic thereover; to change the name of any street, avenue or road within said city, and regulate and cause the numbering and re-numbering of houses on any street, avenue or road therein; to regulate the naming of streets, avenues and public places; to regulate and determine the width of streets, sidewalks, roads and alleys; to order and direct the curbing, re-curbing, paving, re-paving, and repairing of sidewalks and footways for public use in said city to be done and kept clean and in good order by the owners of adjacent property; to enter into a contract with the County of Kanawha, or any internal improvement company for the joint ownership of any bridge by the city and such county or company, upon such terms as may be prescribed in the contract, but any such bridge shall be a public highway and the interest of the company, county and city shall be only such proportionate part thereof as it may pay for or that may be named in the contract; to prohibit and punish the abuse of animals; to restrain and punish vagrants, mendicants, beggars, tramps, prostitutes, fortunetellers, palmists, drunken or disorderly persons within the city, and to provide for their arrest and manner of punishment; to prohibit and punish by fine the bringing into the city by steamboats, railroads or other carriers of persons known to be paupers, dangerous or objectionable characters or afflicted with contagious diseases; to control and suppress disorderly houses of prostitution or ill-fame, houses of assignation and gaming houses or any part thereof; to punish those guilty of possessing, transporting or selling intoxicating liquors and to confiscate all automobiles, cars, wagons, boats, water and aircraft,

beasts of burden and vehicles of any kind in connection with which intoxicating liquors are had, kept or possessed for the purpose of transportation or carrying in any way within the city; to punish those engaged in gaming and to suppress all gaming or gambling houses, and all places where gambling or betting is in any way carried on or permitted, and to punish all persons in any way connected therewith; to prohibit within the city or within two miles thereof, slaughter houses, soap or glue factories and houses and places of like kind, and any other thing or business dangerous, unwholesome, unhealthy, offensive, indecent or dangerous to life, health, peace or property; to provide for the entry into and the examination of all dwellings, lots, yards, enclosures, buildings and structures, cars, boats and vehicles of every description, and to ascertain their condition for health, cleanliness or safety; to regulate the building and maintenance of party walls, partition fences or lines, fire-walls, fire places, chimneys, boilers, smoke stacks and stove pipes; to provide for and regulate the safe construction, inspection and repairs of all public and private buildings, bridges, basements, culverts, sewers, or other buildings or structures of any description; to take down and remove, or make safe and secure, any and all buildings, walls, structures or superstructures at the expense of the owners thereof, that are or may become dangerous, or to require the owners or their agents to take down and remove them or put them in a safe and sound condition at their own expense; to regulate, restrain or prohibit the erection of wooden or other buildings within the city; to regulate the height, construction and inspection of all new buildings hereafter erected, and the alteration and repair of any buildings already erected or hereafter erected in said city, and to require permits to be obtained for such buildings and structures, and plans and specifications thereof to be submitted to the building inspector; to regulate the limit within which it shall be lawful to erect any steps, porticos, bay windows, bow windows, show windows, awnings, signs, columns, piers or other projection or structural ornaments of any kind for the houses or buildings fronting on any street of said city; to establish fire limits and to provide the kind of buildings and structures that may be erected therein, and to enforce all needful rules and regulations to guard against fire and danger therefrom; to require, regulate and control the construction of fire escapes for any building or other structures in said city, to control the opening and construction of ditches, drains, sewers, cesspools and gutters, and to deepen, widen and clear the same of stagnant water or filth, and to prevent obstruction therein, and to fill, close or abolish the same and to determine at whose expense the same shall be done; and to build and maintain fire station houses, crematories, jails, lock-ups, and other buildings, police stations and police courts, and to regulate the management thereof; to acquire, establish, lay off, appropriate, regulate, maintain and control public grounds, squares and parks, hospitals, market houses, city buildings, airports, libraries and other educational or charitable institutions, either within or without the city limits, and when the council determines that any real estate rights, or materials in or out of the city is necessary to be acquired by said city for any such city purpose, or for any public purpose, or is necessary in the exercise of its powers herein granted, the power of eminent domain is hereby conferred upon said city, and it shall have the right to institute condemnation proceedings against the owner thereof,

whether said property be in or out of said city, in the same manner, to the same extent, and upon the same conditions as such power is conferred upon public service corporations by chapter forty-two of the Code of West Virginia of the edition of 1923, and is now or may be hereafter amended [see W.Va. Code, 1931 ch. 54, as amended]; to purchase, sell, lease or contract for and take care of all public buildings and structures and real estate deemed proper for the use of such city; and for the protection of the public to cause the removal of unsafe walls, structures or buildings, and the filling of excavations; to acquire or assist in acquiring land to be donated, dedicated or conveyed to, or otherwise vested in, the State of West Virginia as a site for a state capital or other public buildings, and to donate, dedicate and convey the same to said state or otherwise procure the title to the same to be vested in said state; to prevent injury or annoyance to the business of individuals from anything dangerous, offensive or unwholesome; to abate or cause to be abated all nuisances and to that end and thereabout to summon witnesses and hear testimony; to regulate or prohibit the keeping of gunpowder and other combustible or dangerous articles, and to regulate the transportation of same through the streets, alleys and public places; to regulate, restrain or prohibit the use of fire-crackers or other explosives or fireworks, and all noises or performances which may be dangerous, indecent or annoying to persons or tend to frighten horses or other animals; to provide and maintain proper places for the burial of the dead, in or out of the city, and to regulate interments therein upon such terms and conditions as to price and otherwise as may be determined; to provide for shade and ornamental trees, shrubbery, grass, flowers and other ornamentation, and the protection of the same; to provide for the poor of the city; to make suitable and proper regulations in regard to the use of the streets, public places, sidewalks and alleys by street cars, foot passengers, animals, vehicles, motors, automobiles, traction engines, railroad engines and cars, and to regulate the running and operation of the same so as to prevent obstruction thereon, encroachment thereto, injury, inconvenience or annoyance to the public; and to regulate fares and operation of motor vehicles operating on a fixed route used in the public transportation of passengers or property; to purchase or otherwise secure life, health or accident policies on the group or other convenient plan upon the members of the city police force and fire department, and as an element of compensation of such members may appropriate the money necessary to defray the cost thereof; whenever in its opinion the safety of the public so requires to authorize or require by ordinance any railroad company operating railroad tracks upon or across any public street or streets of the city, to construct and maintain overhead or undergrade crossings wherever the tracks of said company are laid upon or across the public streets of such city, and to apportion according to general law between any such railroad company and city the cost of such construction and maintenance and the cost of the acquisition of the necessary property and rights of way and the damages to abutting properties between any such railroad company and city; to prohibit prize fighting and cock and dog fighting; to license, tax, regulate or prohibit theaters, moving pictures, circuses, and exhibition of showmen and shows of any kind, and the exhibtion of natural or artificial curiosities, carnivals, menageries and music exhibitions and performances, and other things or business on which the state does or may exact a

license tax; to organize and maintain fire companies and departments, and to provide necessary apparatus, engines and implements for the same and to regulate all matters pertaining to the prevention and extinguishing of fires; to make proper regulations for guarding against danger and damage from fires, water or other elements; to regulate and control the kind and manner of plumbing and electric wiring, the operation and height of flying of aeroplanes, airships and balloons; to regulate wireless stations, radio stations and other appliances for the protection of the health and safety of said city; to levy taxes on property, property and licenses, to license and tax dogs and other animals and regulate, restrain and prohibit them and all other animals and fowls running at large; to provide revenue for the city and appropriate the same to its expenses; to adopt rules for the transaction of business of its own regulation and government; to promote the general welfare of the city, and to protect the persons and property of citizens therein; to regulate and provide for the weighing of produce and other articles sold in said city and to regulate the transportation thereof and other things, through the streets, alleys and public places; to have the right to grant, refuse or revoke any and all licenses for the carrying on of any business within said city on which the state exacts a license tax; to establish and regulate markets and to prescribe the time for holding the same, and what shall be sold in such market, and to let stalls or apartments and regulate the same; to acquire and hold property for market purposes; to regulate the placing of signs, billboards, posters and advertising on or over the streets, alleys, sidewalks and public grounds of said city; to preserve and protect the peace, order and safety and health of the city and its inhabitants, including the right to regulate the sale and use of cocaine, morphine, opium and poisonous or dangerous drugs; to appoint and fix the place of holding city elections; to erect, own, lease, authorize or prohibit the erection of gas works, electric light works or water works, ferry boats, in or near the city, and to operate the same, and to sell the product of services therefrom and to do any and all things necessary and incidental to the conduct of such business; to build, hold, purchase, own and operate toll bridges; to enter into an agreement with the County of Kanawha, whereby the council and the county court of Kanawha County shall have the power and authority to provide for a full time health officer in charge of all the general health and sanitation activities and of the enforcement of all laws and regulations relating to public health, in the City of Charleston, the County of Kanawha, and to provide for necessary assistants, nurses, clerks and other employees, and the expenses of the administration thereof, and to provide for a proper division of all such expenses between the city and county, and make all needful rules and regulations to fully carry into effect the said joint undertaking between the City of Charleston and the County of Kanawha; to provide for the purity of water, milk, meats and provisions offered for sale in said city, and to that end provide for a system of inspecting the same and making and enforcing rules for the regulation of their sale; and to prohibit the sale of any unwholesome or tainted milk, meats, fish, fruit, vegetables, or the sale of milk, containing water or other things not constituting a part of pure milk; to provide for inspecting dairies and slaughter houses, whether in or outside of the city, where the milk and meat therefrom are offered for sale within said city, and to prohibit the sale of any articles deemed unwholesome, and to condemn

the same or destroy or abate it as a nuisance; to provide for the regulation of public processions so as to prevent interference with public traffic, and to promote the good order of the city; to prescribe and enforce ordinances and rules for the purpose of protecting the health, property, lives, decency, morality, cleanliness and good order of the city and its inhabitants and to protect places of divine worship in and about the premises where held, and to punish violations of all ordinances, although the offense under and against the same shall also constitute an offense under the laws of the State of West Virginia or the common law; to provide for the employment and safe keeping of persons who may be committed in default of payment of fines, penalties or costs under this act [this Charter], who are otherwise unable to discharge the same, by putting them to work for the benefit of the city upon the streets or other places in or out of the city provided by said city, and to use such means to prevent their escape while at work as the council may deem expedient; and the council may fix a reasonable rate per day as wages to be allowed such persons until the fine and costs against him [them] are thereby discharged; to compel the attendance at public meetings of the members of the council; to have and exercise such additional rights, privileges and powers as are granted to municipalities by chapter forty-seven [now chapter 8, the Municipal Code of West Virginia] of the Code of West Virginia as amended.

For all such purposes, except that of taxation and for purposes otherwise limited by this act [this Charter], the council shall have jurisdiction for one mile beyond the corporate limits.

And the council shall have the right to establish, construct and maintain public markets, landing ferries, wharves, parking places and docks on any ground which does or shall belong to said city, or which it shall acquire, by purchase or otherwise, and to sell, release, repair, alter or remove any public markets, landings, ferries, wharves, dikes, buildings or docks which have been or shall be so constructed, and to levy and collect reasonable duty on vessels and other craft coming to or using said landings, ferries, wharves, dikes, docks, parking places and buildings, and to preserve and protect the peace and good order at the same, and regulate the manner in which they shall be used; and to have the sole right, under state laws and in the same manner as now control county courts, to establish, construct, maintain, regulate and control all such wharves, docks, ferries and landings within the corporate limits of said city.

To carry into effect these enumerated powers and all other powers conferred upon said city expressly or by implication in this and other acts of the legislature, the council of said city shall have the power in the manner herein prescribed, to adopt and enforce all needful orders, rules and ordinances not contrary to the laws and constitution of this state; and to prescribe, impose and enforce reasonable fines and penalties, including imprisonment in the city lock-up, jail or stationhouse, and to work prisoners found guilty, as the coun-

cil may prescribe, and market the products of such labor, and with the consent of the county court of Kanawha County, entered of record, shall have the right to use the jail of said county for any purpose necessary to the administration of its affairs. (Acts 1929 (Muni. ch.), ch. 4, § 7.)

For constitutional provisions as to taking of private property for public use, see Const. W. Va., art. III, § 9. As to municipal home rule, see Const. W. Va., art. VI, § 39. For state law relating to municipalities, being the Municipal Code of West Virginia, see W.Va. Code, ch. 8. As to general powers of municipalities and their governing bodies, see W. Va. Code, §§ 8-11-1 et seq., and 8-12-5.

For a case citing this section and holding that where a statute confers power upon a municipal corporation to be exercised for the public good, the exercise of the power is not merely discretionary, but imperative, and the words "the council shall have power to" mean duty and obligation, see Broun v. Charleston, 116 W. Va. 51, 178 S.E. 597 (1935), approving Cavender v. City of Charleston, 62 W.Va. 654, 59 S.E. 732.

*For a case holding that the words of this section "***to provide for and regulate the safe construction, inspection and repairs of all public and private buildings, *** to regulate the height, construction and inspection of all new buildings hereafter erected, and the alteration and repair of any buildings already erected or hereafter erected in said city, and to require permits to be obtained for such buildings and structures, and plans and specifications thereof to be first submitted to the building inspector;" did not confer authority upon the city to enact a building code or a zoning ordinance which could be applicable to a building constructed by the state office building commission, created by chapter 43, Acts of the legislature, 1939, on property purchased under the general appropriation act, contained in chapter 9, Acts of the legislature, 1949, see Charleston v. Southeastern Con. Co., 134 W. Va. 666, 64 S.E. 2d 743 (1950).*

For a case holding that where the city council had enacted an ordinance vacating certain streets in a subdivision, pursuant to authority set out in W. Va. Code, § 8-12-5, subsec. (1), and the words of Char., § 7, ".... to lay off, vacate,

close....for the use of the public....", to entitle a property owner to certiorari to review the action of the city council in vacating and closing a street, the petitioner must allege that his property abuts on that part of the street vacated, or that he will suffer special or peculiar damage or inconvenience not common to all, see Barker v. City of Charleston, 134 W. Va. 754, 61 S.E. 2d 743 (1950).

*For a case holding that the provisions: "The council of said city shall have, and is hereby granted power*** to establish fire limits and to provide the kind of buildings and structures that may be erected therein, and to enforce all needful rules and regulations to guard against fire and danger therefrom; *** to prevent injury or annoyance to the business of individuals from anything dangerous, offensive or unwholesome; to abate or cause to be abated all nuisances; *** to regulate or prohibit the keeping of gunpowder and other combustible or dangerous articles; *** to organize and maintain fire companies and departments and to provide necessary apparatus, engines and implements for the same, and to regulate all matters pertaining to the prevention and extinguishment of fires; to make proper regulations for guarding against danger and damage from fires, water or other elements; *** to promote the general welfare of the city, and to protect the persons and property of citizens therein; ***," and other provisions similar to provisions of this section, but contained in a prior city charter, were sufficient authority for the city council to enact an ordinance regulating the keeping, storage or transportation of gasoline or other explosives, including dangerous oils, see State ex rel Oil Service Co. v. Stark, 96 W. Va. 176, 122 S.E. 533 (1924).*

For a case holding that certain language of section 7 of prior city Charter, i. e.: "The council of said city shall have, and is hereby granted power ....to punish violations of all ordinances, if the offenses under and against the same shall also constitute offenses under the laws of the State of West Virginia or the common law; ....to carry into effect these enumerated powers and all other powers conferred upon said city expressly or by implication in this and other acts of the

Legislature, the council of said city shall have the power, in the manner herein prescribed, to adopt and enforce all needful orders, rules and ordinances not contrary to the laws and Constitution of this state; and to prescribe, impose and enforce reasonable fines and penalties, including imprisonment in the city lock-up, jail or station house," [compare with section 7 of present city Charter] granted authority to the city council to enact an ordinance which prescribed penalties in excess of those prescribed by state law for a similar offense, see State v. Wertz, 91 W. Va. 622, 117 S.E. 242, 29 A.L.R. 391 (1922).

For a case construing certain language of section 7 of prior city Charter [identical to language contained in section 7 of present city Charter]: "The council of said city shall have, and is hereby granted power....to pass ordinances to protect and preserve the health, property, lives, decency, morality, cleanliness, and good order of the city...." to include within its terms authority to pass an ordinance prohibiting work or labor on the Sabbath Day, see State v. Wertz, supra, cited with approval in McGowan v. State of Maryland, 366 U.S. 420 (at page 497), 66 L. Ed. 393, 81 S.Ct. 1153(1961).

For a case construing a section of a prior city Charter which, in language differing from that contained in this section, also granted authority to the city council to establish building lines, and holding that an ordinance establishing a building line on a certain street and inhibiting owners of abutting land from encroaching thereon, based on merely aesthetic considerations, is not within the police power and is unenforceable as a police regulation, see Fruth v. Board of Affairs, 75 W. Va. 456, 84 S.E. 105 (1915).

Sec. 7-a. Authority of council, municipal judge, circuit and common pleas courts and judges relating to city licenses.

The council of the City of Charleston shall have full discretion in the matter of granting, refusing and revoking licenses for keeping hotels, eating houses and restaurants, garages, taxi-cab stands, bowling alleys, pool and billiard tables and like tables, and for selling soft drinks, as in the case of other licenses, and shall supervise, regulate and control all places licensed for said purposes, and the municipal judge shall have jurisdiction when such city license and regu-

lation is sought to be evaded and may prevent such evasion, provided, that no such license, regulation or control shall apply to any fraternal beneficiary society permitted under the state laws. The council shall make no provision for the licensing of automobiles or other motor vehicles, except that in the case of motor vehicles used in the transportation of passengers or property for hire the council may require from the owner or operator of any such vehicle a bond, with sureties, and in such penalty, and with such conditions as it may deem proper. The council shall have power to enact and enforce proper ordinances for the purpose of carrying into effect the powers hereby granted.

If any person fails or refuses to secure a license or to pay any license tax due the city, or fails to obtain a permit to do anything for which a permit is required by ordinance, in addition to all other penalties and remedies provided by the ordinances of the city, the circuit court of Kanawha County and the court of common pleas of Kanawha County, or the respective judge thereof, in vacation, upon application in the name of the city or of any officer of the city, shall grant an injunction, inhibiting such person from continuing the business until the full amount of the license tax and penalty prescribed by the ordinance and due the city is paid, or until the person has obtained the license or permit as required by any ordinance. (Acts 1929 (Muni. ch.), ch. 4, § 7-a.)

For state law as to authority of city to require a city license for anything for which a state license is required, unless prohibited by general law, and to impose a reasonable tax thereon not in excess of state tax, see W.Va. Code, § 8-13-4, as modified by W. Va. Code, § 11-12-4.

Sec. 7-b. Regulation of operation of motor vehicles.

The council of the City of Charleston is hereby granted power, in addition to the powers heretofore granted it, to regulate by ordinance the operation of motor vehicles and other vehicles in said city, and the speed at which the same may be driven, and to provide for the punishment of violations of such ordinances; and said council is given specific authority to punish the violation of ordinances relating to the speed of such vehicles, or the operation thereof, by impounding or taking possession of such vehicles and retaining the same for such time as may be prescribed by ordinance not to exceed thirty days. (Acts 1929 (Muni. ch.), ch. 4, § 7-b.)

For state law as to powers of local authorities, see W.Va. Code, § 17C-2-8.

Sec. 8. Persons entitled to vote.

Every person qualified by law to vote for members of the legislature of this state (and who shall have been a resident of said city for ~~sixty days~~ 30 preceding the day of election, of the ward in which he offers to vote at least ten

days preceding such day and a bona fide resident of the election precinct in which he offer to vote) shall be entitled to vote at all elections held in said city by or under the authority and control thereof. (Acts 1929 (Munl. ch.), ch. 4, § 8.)

Editor's note.--Acts 1972, Ex. Sess., ch. 1, amended W.Va. Code, § 3-1-3, as to persons entitled to vote at state elections, by deleting the requirement for sixty days residence in the county or municipality in which he offers to vote; and such requirement is no longer applicable to city elections under this section of the Charter.

Sec. 9. Boundaries of voting precincts; registration books; registering voters; transfer from one precinct to another; duties of county court.

Voting precincts in the several wards for the city election shall be the same as to boundaries as those fixed by the county court for all state and county elections. The county clerk of Kanawha County shall carefully preserve in his office, registration books of each general state and county election for all of the precincts of the City of Charleston, and the original of said books shall be used as the registration for all regular and special city elections, with such corrections as are herein provided for. Said registration books shall never be out of the possession and control of the county court of Kanawha County, or the clerk thereof, except as hereinafter provided:

The county court of Kanawha County shall sit on the three last Saturdays and the last Monday next preceding any regular election or primary in said City of Charleston for the purpose of registering voters who have not been already registered in the various precincts, and for transferring voters from one precinct to another which shall be done, upon a proper showing, by striking the name of the voter from the registration book in which it appears, and placing the same upon the registration book of the precinct in which the voter is entitled to vote, and no other way, and for striking off the name of any voter from the registration books when it shall be shown to the satisfaction of said court that such person is no longer a voter in said city, and said court shall also strike from such registration books the name of any person known or proved to them to be dead. It shall be the duty of the clerk of said city to give notice of the time and place of the sitting of said court by publication in two newspapers of opposite politics printed and circulated in said city, once a week for four successive weeks before any such municipal election or primary. The clerk of the county court of Kanawha County shall transfer on the registration books the names of such voters as present themselves to him, in person, during such days preceding any municipal election after the first Saturday on which the county court sits, as above provided. The two major political parties, through the chairman of their respective municipal executive committees, may appoint challengers to

be present at the office of the clerk of said county court on the days when the said clerk is herein authorized to make transfers, but said clerk's decision in the matter shall control. (Acts 1929 (Muni. ch.), ch. 4, § 9; 1933, Reg. Sess., ch. 117.)

For state law as to integration of municipal elections with system of permanent registration, see W. Va. Code, § 8-5-13. As to arrangement and filing in county clerk's office of registration records to be used in municipal elections, see W. Va. Code, § 3-2-15.

Sec. 9-a. Special registrars; compensation of county court and clerk; delivery of registration books to city clerk; return to clerk of county court.

No special registrars shall be appointed for any municipal election or primary and the county court of Kanawha County and the clerk thereof shall receive nothing for their services as required by this and the last preceding section.

On the day prior to any municipal election or primary the clerk of said county court shall deliver to the city clerk of said City of Charleston all original registration books used in the last general county and state election, as corrected by the county court of said county, and the clerk of said city shall send the same to the various precincts of said city, as provided by law. After said registration books are delivered to said clerk of said city, no person shall add to the same any name, nor erase therefrom any name, and any person found guilty of either adding or erasing one or more names shall be guilty of a felony and confined in the penitentiary not less than one, nor more than five years. As soon as may be possible after the holding of any such municipal election or primary said original registration books shall be returned by the clerk of said city to the clerk of the county court of Kanawha County, West Virginia, who shall carefully preserve all of said registration books for such use as is required by law. (Acts 1929 (Muni. ch.), ch. 4, § 9-a; 1933, Reg. Sess., ch. 117.)

For state law as to integration of municipal elections with system of permanent registration, see W. Va. Code, § 8-5-13. As to arrangement and filing in county clerk's office of registration records to be used in municipal elections, see W. Va. Code, § 3-2-15.

Sec. 10. Nomination of candidates.

Candidates to be voted for at municipal elections may be nominated by convention, or primary election, as may be decided by the executive committees of any of the parties recognized by law in said city, and candidates may be nominated by petition in the manner provided by chapter three of the Code of

West Virginia. Each of the political parties having the right to make a nomination under the election laws of West Virginia shall give notice of the manner of such nomination by publication thereof in some daily newspaper printed in the City of Charleston for ten days prior to the date of such convention or primary election. (Acts 1929 (Munl. ch.), ch. 4, § 10.)

For state law as to municipal political party executive committees and municipal primary elections, see W. Va. Code, § 8-5-14.

For a case holding that a political committee within the purview of this section had the power and authority to rescind, abrogate or alter, at a subsequent meeting, what it did at a previous one, before "consumption" [consummation?], in the absence of a statutory provision inhibiting such action; and that where relator announced his candidacy for the nomination for mayor in reliance upon the executive committee of his party having by resolution set a primary election date and the city council had then enacted an ordinance providing for a primary election to be held on that date and had thereupon appointed election officials for such primary, he did not attain a vested interest in such primary, and that a subsequent resolution of the party executive committee annulling its prior resolution and provided instead for a convention to be held, relator's petition for mandamus to compel the holding of a primary election would be denied, see Reynolds v. Fielder, 110 W. Va. 240, 157 S.E. 597 (1931).

Sec. 11. When county and city voting precincts to be the same; how elections to be held.

Whenever the county court of Kanawha County shall arrange the voting precincts in the City of Charleston for state and county elections, according to the lines of the city wards, then such precincts with the same boundaries and the same voting places as provided for such state and county elections shall be the precincts for all city elections. Except as may be otherwise provided, by this act [this Charter], all city elections shall be held by the council and the officers therefor appointed in the way and manner prescribed in chapter 3 of the Code of West Virginia, but no double election boards shall be appointed for any city election. (Acts 1929 (Munl. ch.), ch. 4, § 11.)

Sec. 12. Law governing preparation of ballot and method of voting.

The preparation of the ballot and the method of voting and all other requirements of chapter 3 of the Code of West Virginia, except as changed or modified

Elections Chapter 3 WV Code

by this act [this Charter], shall govern all city elections held under the provisions hereof. (Acts 1929 (Munl. ch.), ch. 4, § 12.)

Sec. 13. The council--Title; how constituted.

The City of Charleston shall have a council, which shall be known and styled as the "Council of the City of Charleston" and shall consist of one resident of each of the wards of the city, and ~~five~~ six councilmen to be voted for by all the voters of said city, all of whom shall be nominated, voted for and elected in the manner herein provided. (Acts 1929 (Munl. ch.), ch. 4, § 13.)

Editor's note.--Since enactment of this section by the legislature in 1929, section 4 of the Charter was amended in 1966 so as to provide for one councilman from each ward and six councilmen at large.

For state law as to election of mayor and councilmen, see W. Va. Code, § 8-5-7.

Sec. 14. Same--Qualifications; vacancies.

Only citizens entitled to vote and residents and voters of their respective wards and having the proper qualifications hereinbefore provided shall be eligible to be elected to the office of councilmen [councilman] from their respective wards and at large, and each councilman so elected from a ward shall continue to be a resident of the ward from which he is elected during his entire term of office.

3rd Tuesday in May 1999
Bill 6050 12-4-94 ~~Changed date to~~

At the election to be held on the third ~~Monday in April, 1931~~, there shall be elected one member of the council from each ward and five members of the council from the city at large. If any person elected to council fails to qualify within twenty days after he is declared elected, or resigns as a member of the council, or ceases to be a resident of the ward from which he is elected, then his office shall thereby be vacated and the council shall fill such vacancy by the election of some qualified person for such unexpired term. No person shall be declared elected by the council unless he receives the votes of at least a majority of the members elected thereto and the minutes of such meeting shall show that fact. (Acts 1929 (Munl. ch.), ch. 4, § 14.) (Ord. 6050 12-4-94)

Editor's note.--There are now six councilmen elected at large instead of five, see Char., § 4. As to election and term of elective officers after the year 1931, see Char., § 35.

Sec. 15. Same--Mayor; clerk; president pro tempore.

The mayor shall be the presiding officer of the council and be a member thereof, with the right to vote on all questions the same as any other member of

said council, and the city clerk shall be ex officio clerk of the council, and the mayor and city clerk shall each perform such other duties as the council may require of them. The council shall, at its first meeting after each election, select one of its body as president pro tempore, who shall in the absence of the mayor, preside as chairman of the meeting of the council, and in the absence of both the mayor and president pro tempore at any meeting of the council, some member of the council shall be elected to preside over such meeting. (Acts 1929 (Muni. ch.), ch. 4, § 15.)

For state law as to presiding officer of municipal council, see W. Va. Code, §§ 8-9-1, 8-9-2.

Sec. 16. Same--Representation of new ward.

Whenever by the extension of the corporate boundaries of the city a new ward is created as part of the city, such new ward shall have representation in the city council and within thirty days after the act creating such new ward takes effect, the council shall proceed to elect one qualified resident thereof, as a member of said council, to hold office until the next general city election. (Acts 1929 (Muni. ch.), ch. 4, § 16.)

For state law as to annexation of territory by municipalities, see W. Va. Code, § 8-6-1 et seq.

Sec. 17. Same--Exercise of legislative functions; information, etc., from officers and employees.

The council shall exercise all of the legislative functions of the city government and shall have the right to demand of any city official, or employee, information, explanations, facts, details, correspondence, or other papers affecting the city's interest; and it shall be malfeasance and neglect of duty for any such official or employee to fail or refuse to comply with such demands. (Acts 1929 (Muni. ch.), ch. 4, § 17.)

For state law as to powers of municipal governing bodies generally, see W. Va. Code, §§ 8-11-1 et seq., and 8-12-5.

Sec. 18. Audit of books and accounts.

The council shall by proper ordinance provide for the auditing of all the books and accounts of the city at least once in each year, and shall employ a reputable certified public accountant for such purpose, and such audit shall show the complete financial condition of the city at the time thereof and the receipts and disbursements of all moneys during such year. The council may also provide by ordinance for the publication of the report of the accountant on the financial condition of the city at least once in each year, and such report of

the accountant shall be spread upon the records of the council and be a public record for all purposes. (Acts 1929 (Muni. ch.), ch. 4, § 18.)

Sec. 19. Removal of officers by council or by circuit court of Kanawha County, or by officers having appointment authority.

Any member of the council, and any city official, either elected or appointed, may be removed from his office by the council for any of the following causes: Official misconduct, incompetence, habitual drunkenness, neglect of duty, or gross immorality. The charges against any such officer shall be reduced to writing and entered of record by the council, and a summons shall thereupon be issued by the city clerk containing a copy of the charges and requiring the officer named therein to appear and answer the same on a day to be named therein, which summons may be served in the same manner as a summons commencing an action may be served, and the service must be made at least five days before the return day thereof, and it shall require the affirmative vote of two-thirds of all the members elected to council to remove any such official. The circuit court of Kanawha County shall have concurrent jurisdiction with the council to try, hear and determine any proceedings for the removal of any city official for any of the causes herein mentioned.

The mayor, or any other city official having the power of appointment, shall have the absolute right in his discretion to remove any of his appointees and appoint another qualified person in his place, but such removal shall be in writing and served upon said official so removed, and all the rights and powers of such official shall cease and end from the time of such service. (Acts 1929 (Muni. ch.), ch. 4, § 19.)

Sec. 20. Rules and regulations for government of council; record of meetings.

The council shall make proper rules and regulations for its own government and the conduct of its business, which rules shall not be contrary to, or inconsistent with, any of the provisions of this act [this Charter], and such rules shall be duly entered of record and shall be published by the council in any municipal code or other publication made by the council of this act and the ordinances of said city. The council shall cause a record of its meetings to be kept and recorded by the city clerk in a well bound book provided by the council for that purpose, which book shall remain in the custody and at the office of the city clerk, and all the books containing the proceedings of former councils or other governing bodies of the City of Charleston, shall likewise remain in the custody and be kept at the office of the city clerk, and all such books and all city records shall at reasonable hours and in a reasonable manner be open to the inspection of the public. (Acts 1929 (Muni. ch.), ch. 4, § 20.)

For state law as to proceedings of municipal governing bodies, see W. Va. Code, § 8-9-1 et seq. As to powers and duties of recorders, see W. Va. Code, § 8-10-3. As to authority of municipal

governing bodies to adopt rules for the transaction of business, etc., and to conduct investigations, see W. Va. Code, § 8-12-5, subsecs. (45) and (48).

Sec. 21. Regular meetings of council.

The council shall hold regular meetings on the first and third Mondays of each month, and the hour and place of such meetings shall be fixed by the council in the rules adopted by it. (Acts 1929 (Muni. ch.), ch. 4, § 21.)

Sec. 22. Special meetings of council.

Special meetings of the council shall be held when called by the mayor or ten members thereof. In either case, the call therefor shall be in writing and signed by the mayor or members issuing it, and shall state the time, place and business to be considered thereat, and a copy thereof shall be served upon each member of the council then in the city, and also be published on two successive days in two daily newspapers printed and circulated therein. No business, other than that stated in such call, shall be considered at such meeting. (Acts 1929 (Muni. ch.), ch. 4, § 22.)

Sec. 23. Council procedure for contested elections, and right of appeal to circuit court.

All contested elections shall be heard and determined by the council and such contests shall be made and conducted in the same manner as provided for in the case of contests for county and district officers; and the council shall conduct its proceedings in such cases as nearly as practicable in conformity with the proceedings of the county court in such cases, and there shall be the same right of appeal, in the same way, to the circuit court of Kanawha County. (Acts 1929 (Muni. ch.), ch. 4, § 23.)

For state law as to contested municipal county and district elections, see W. Va. Code, §§ 3-7-6 through 3-7-9; and, see also, as to contested municipal elections, W. Va. Code, § 8-5-17.

Sec. 24. Oath of officers; how and within what time officers must qualify; failure to qualify vacates office.

All officers elected and appointed shall take an oath, before some one authorized to administer oaths, that they will support the Constitution of the United States, the Constitution of this state, and will faithfully and impartially discharge the duties of their respective offices to the best of their skill and judgment; that they are not and will not during their term of office, in any way or manner become pecuniarily interested directly or indirectly in any contract with the city, in any franchise granted by it, or in the purchase of supplies

therefor. When the officer shall have made such oath in writing and filed the same with the city clerk and shall have given the bond required of him, he shall be considered as having qualified for the office to which he was elected or appointed; provided, that if any person so elected or appointed shall not qualify for said office as herein prescribed, within twenty days after he shall have been officially declared elected or appointed thereto, said office shall ipso facto become vacant, and said vacancy shall be filled in the same manner as other vacancies therein are provided for in this act [this Charter]. (Acts 1929 (Muni. ch.), ch. 4, § 24.)

For state law as to oath of municipal officers, see W. Va. Code, § 8-5-8.

Sec. 25. Bonds of officers and employees; record of bonds.

The mayor, manager, city clerk, municipal court clerk, treasurer, city solicitor, city collector, municipal judge, health commissioner, chief of police and chief of fire department, each shall, before entering upon the discharge of their respective duties, give an official bond, conditioned for the faithful performance of such duties as are prescribed in this act [this Charter] or any ordinance now or hereafter passed, in amounts as follows: The mayor, one thousand dollars; manager, ten thousand dollars; city collector, ten thousand dollars; the treasurer, sixty thousand dollars; the city clerk, municipal court clerk, municipal judge and city solicitor, three thousand dollars, respectively; health commissioner, chief of police and chief of the fire department, one thousand dollars, respectively.

The council may require additional bond from any of said appointive officers, and may likewise require bond, in whatever sum they may fix, of any other appointive officer or employee. All bonds of officers or employees shall, before their acceptance, be approved by the council. The minutes of the meeting of council shall show all matters touching the consideration or approval of all bonds, and when said bonds are approved and accepted, they shall be recorded by the city clerk in a well bound book kept by him at his office for that purpose, which book shall be open to public inspection; and the recordation of such bonds as aforesaid shall be prima facie proof of their correctness, and they, as so recorded, as well as copies thereof duly attested by the city clerk under the seal of the city, shall be admitted as evidence in all courts of this state. The city clerk shall be the custodian of all bonds, except that given by him, and as to it, the city treasurer shall be custodian. All bonds, obligations or other writings taken in pursuance of any provisions of this act [this Charter], shall be made payable to "the City of Charleston," and the respective persons, and their heirs, executors, administrators and assigns bound thereby shall be subject to the same proceedings on said bonds, obligations and other writings, for the purpose of enforcing the conditions of the terms thereof, by motion or otherwise, before any court of record held in and for the County of Kanawha, that collectors of county levies and their sureties are or shall be subject to on their bonds for enforcing the payment of the county levies. (Acts 1929 (Muni. ch.), ch. 4, § 25.)

Sec. 26. Quorum of council; compelling attendance of absent members.

A majority of the whole number of members elected to the council shall be necessary for the transaction of business, but a smaller number may adjourn from time to time and may compel the attendance of absent members, in such manner and under such penalties as it may by rules provide. (Acts 1929 (Muni. ch.), ch. 4, § 26.)

For state law as to quorum of a municipal governing body, see W. Va. Code, § 8-9-1.

Sec. 27. Voting in council and recording of votes.

Unless otherwise herein provided, the vote upon any question or motion before the council may be viva voce when unanimous; but if the question or motion does not receive the unanimous vote of the members present, the vote shall be taken by roll call of the members and made a part of the minutes of the meeting, and when the vote is unanimous the minutes shall so state. (Acts 1929 (Muni. ch.), ch. 4, § 27.)

For state law as to voting in council and minutes of proceedings, see W. Va. Code, § 8-9-3.

Sec. 28. City clerk is ex officio clerk of the council; council minutes and admissibility thereof in evidence.

The city clerk shall be ex officio clerk of the council and shall keep detailed minutes of its meetings and proceedings in a well bound book for that purpose, which shall remain in the custody of the city clerk at his office and open to public inspection. The minutes of every meeting after being corrected, shall be signed by the mayor and city clerk, and, if thus recorded and signed, they shall be admitted as evidence in any court of record in this state. (Acts 1929 (Muni. ch.), ch. 4, § 28.)

For state law as to council records and minutes of proceedings, see W. Va. Code, § 8-9-3. As to duty of municipal recorders to keep the journal of proceedings of governing body, see W. Va. Code, § 8-10-3.

Sec. 29. Holding two offices.

No officer of the city shall hold two offices with the city at the same time, or be employed by the city in any other capacity, without first having the consent of the council. (Acts 1929 (Muni. ch.), ch. 4, § 29.)

Sec. 30. Failure of mayor or other officer to make appointments

Whenever the mayor or other officer shall fail to make any and all appointments under him, or required to be made by him, for a period of thirty days from the time such appointment should have been made, his office may be declared vacant by the council, and his successor appointed, in the manner herein provided. (Acts 1929 (Muni. ch.), ch. 4, § 30.)

Sec. 31. Vacancy in office of mayor or treasurer; vacancy in office of appointive officer; officers hold office until successors qualified, unless previously removed

Whenever a vacancy for any cause whatever shall occur in the office of mayor or treasurer, the council shall elect some qualified person to fill said vacancy until the next city election, and until his successor shall have been elected and qualified; and when such vacancy shall occur in the office of any appointive officer, his successor shall be appointed by the person making the original appointment, or his successor in office, as hereinbefore provided, and all elective and appointive officers of said city shall hold their respective offices until their successors are elected, or appointed, and qualified, unless sooner removed. (Acts 1929 (Muni. ch.), ch. 4, § 31.)

As to filling vacancy in office of municipal judge, see Char., § 94.
For state law as to filling vacancies in elective municipal offices, see W. Va. Code, § 8-5-10. As to holding office until successor elected or appointed and has qualified, see W. Va. Code, § 8-5-9.

Sec. 32. Corruption in office.

Any member of council or any officer of, or connected with, the city government pursuant to any law of this state or ordinance of the city now or hereafter passed, who shall, in his official capacity or under color of his office, knowingly or willfully, or corruptly vote for, assent to or report in favor of, or allow, or certify for allowance, any claim or demand against the city, which claim or demand shall be on account or under color of any contract or agreement not authorized by or in pursuance of the provisions of this act [this Charter], or the ordinances of the city, or any claim or demand against the city and which claim or demand or any part thereof shall be for work not performed for and by authority of said city, or for supplies or materials not actually furnished thereto pursuant to law or ordinance, and every such member or officer as aforesaid who shall knowingly vote for, assent to, assist or otherwise permit, or aid in the disbursement or disposition of any money or property belonging to the city to any other than the specific use or purpose for which such money or property shall be or shall have been received or appropriated or collected or authorized by law to be received, appropriated or collected, shall, upon conviction

thereof, be punished by imprisonment in the county jail for a period of not less than sixty days nor more than one year or by fine of not less than five hundred dollars, nor more than two thousand dollars, or by both. But the council shall pay any just obligations made by the city and keep and perform all contracts, agreements and obligations made under the law as it was the day before this act goes into effect [this Charter became effective on 6 March, 1929], and for which and on which the city is liable or obligated. (Acts 1929 (Munl. ch.), ch. 4, § 32.)

Sec. 33. Power of council to compel attendance of witnesses and production of records, administer oaths and punish for contempt.

The council in the exercise of its powers and the performance of its duties, as prescribed by this act [this Charter], and by the laws of the state, shall have the power to enforce the attendance of witnesses, the production of books and papers, and the power to administer oaths in the same manner and with like effect, and under the same penalties, as notaries public, justices of the peace, and other officers of the state authorized to administer oaths under state laws; and said council shall have the power to punish for contempt as is conferred on county courts by section 13 of chapter 39 of the Code. [The provisions of Barnes' W. Va. Code Annotated, 1923, ch. 39, § 13, are now contained in W. Va. Code, § 7-1-6.] All process necessary to enforce the powers conferred by this act on the council shall be signed by the mayor (or acting mayor), and may be executed by any member of the police force. (Acts 1929 (Munl. ch.), ch. 4, § 33.)

Sec. 34. Absence or inability of certain officers to perform duties.

Whenever for any reason the mayor shall be absent from the city, or unable to attend to the duties of his office temporarily, the president pro tempore of the council shall perform them during such absence or inability, and in the absence or inability of the manager to attend to the duties of his office temporarily, the mayor shall designate someone to perform such duties, provided, that such temporary absence or inability shall not exceed thirty days, but if such absence or inability shall exceed thirty days, then such appointment or designation shall be submitted to the council, for confirmation or rejection. In the absence or inability of any other appointive city official to perform the duties of his office, the person or body making the original appointment, or his successor in office, shall designate someone to fill such office temporarily, or if such absence or inability extends over a period of sixty days, he may appoint someone to fill such office permanently. (Acts 1929 (Munl. ch.), ch. 4, § 34.)

City Manager

Sec. 35. Election and term of office of elective officers; salary of mayor; appointments by mayor; appointment of city clerk; appointments by manager, term of appointive officers; duties of mayor and city solicitor, salary of solicitor; fees.

Bill 6050 D-4-94

The Mayor, members of council, municipal judge and treasurer elected on the third Monday in April 1995, shall begin their term on the 1st Monday in May after their election and shall hold office until the third Monday in June, 1999, and their successors shall be elected on the third Tuesday in May, 1999, and at intervals of four years thereafter and their term shall begin on the third Monday of June after their election. The mayor's salary shall not be less than three thousand nor more than five thousand dollars per annum.

16. 6 21-99

P 28

Sec. 35 (Cont.)

The mayor shall appoint the city solicitor, an assistant city solicitor, the chief of police, human officer or officers, building inspector, collector, city auditor, engineer, health commissioner, lockup keeper, municipal court clerk, and the chief of the fire department, and these appointments shall not require any confirmation by the council but shall be made at the discretion of the mayor, who shall, with like discretion, have the full and complete power of removal thereof. The mayor shall appoint the manager, by and with the advice and consent of the council. The council shall, either at a regular or special meeting called for that purpose, pass upon such nomination and either confirm or reject the same, and if such nomination is rejected, then the mayor shall submit to the council a further nomination of some other person or persons until the nomination is confirmed by council, for said office of manager, but it shall be the duty of the council to pass upon all nominations without unreasonable delay; and in any event within two weeks after the submission of the same, and the failure of members of the council to pass thereon within such time shall be cause for the removal from office of such members of the council as shall have refused to act thereon.

The council shall appoint a city clerk. The manager shall appoint or employ such persons as the ordinances of the city may require or the council may authorize by proper resolution. All such officers shall be appointed for the term of four years and until their successors are appointed and qualified, unless they are removed in the way and manner in this act (this Charter) provided.

It shall be the duty of the mayor to attend all meetings of the council and preside over that body.

It shall be the duty of the mayor to see that all of the laws and ordinances of the city are enforced and he shall have a general oversight over the peace, health and good order of the city.

The duties of the city solicitor or assistant city solicitor shall be to attend the sessions of council (and) to prosecute all suits in behalf of the city and defend all suits against the city, to advise the council and all of the departments of the city and in general to look after the interests of the city when it shall need legal services. The salary of the solicitor shall be not less than three thousand nor more than five thousand dollars per annum.

All fees of every kind collected by any officer or employee, including the municipal judge when acting as a justice, shall be paid to the city treasurer. (Acts 1929(Muni.ch.), ch. 4 35).

This ordinance shall become effective January 2, 1995.

Sec. 34 Appointment, compensation, powers and duties of the manager.

Must be sworn in

The manager shall be appointed in the way and manner hereinbefore provided and shall receive such salary as council may by ordinance prescribe, provided such amount shall not be less than three thousand nor more than five thousand dollars per annum, and he shall have the right to employ one clerk at such salary as council may fix, and such other help as he may require and as council may from time to time allow.

The manager shall devote his entire time and attention to the duties of his office, and shall have supervision and control of the executive work and management of the heads of all departments under his control as directed by the mayor. He shall make all contracts for labor and supplies, and generally perform all of the administrative work of the city, and such other duties as council may require of him, and shall possess such other powers and perform such other duties as council shall prescribe. (Acts 1929 (Muni. ch.), ch. 4, § 36.)

For state law providing that, "notwithstanding any charter provision to the contrary," the governing body of every municipality shall by ordinance fix the compensation of every municipal officer and employee; provided, that the salary of an officer shall not be increased or diminished during his term of office, see W. Va. Code, § 8-5-12.

Sec. 37. Franchises--Granting; requirements and limitations governing; vote of council required.

Franchises or permits granting the right of occupancy of any portion of the streets or alleys for works of public utility or other use, or granting any right or privilege, which the city has the power to grant to individuals, firms or corporations, in order that the latter may serve the public, may be made only upon the following restrictions and conditions: Such franchises, rights and privileges shall be granted only by ordinance duly passed by the council.

No grant of any such franchise shall be made without, at the time of making it, providing that the grantee shall indemnify the city against all damages caused by construction, maintenance or operation of such works. Additional provisions and conditions shall be made for the protection of the public against damage or inconvenience by reason of the construction, maintenance or operation thereof.

No grant of a franchise for the extension of or an addition to any line or work of public service through, over or under any additional street or territory of the city, shall be made for a period extending beyond the time limit for the expiration of franchise of the principal work of which it is an extension and if the franchise of the principal work is one granted before this act [this Charter] goes into effect and not limited as to time, any franchise granted for an extension or addition thereto shall nevertheless be made subject to the conditions thereof, including a time limit for a period not exceeding twenty-five years. All franchises hereafter granted shall embody therein a plainly expressed condition, where the franchise is for work to be useful chiefly to the citizens of the city, that at the expiration of such franchise or certain periods therein mentioned, the grantee shall, if required by the governing body of the city, sell to the city the plant at its actual value, exclusive of any value for the franchise granted by the city or its earning capacity or productive worth, and no exclusive franchise shall be granted.

If the city and the owner of the plant cannot agree upon its worth, then the value shall be ascertained by an impartial arbitration, one arbitrator to be selected by the city, one by such owner of the plant, these two to select a third and the decision of any two to be binding upon both parties, and if they shall fail for a period of thirty days to select such third arbitrator, then either party may apply to the judge of the circuit court of Kanawha County who shall then appoint such third arbitrator.

No franchise shall be granted without the affirmative vote of two-thirds of all the members elected to said council. (Acts 1929 (Muni. ch.), ch. 4, § 37.)

For state law relating to the granting of franchises by municipalities, see W. Va. Code, §§ 8-31-1, 8-31-2. As to requirement that granting of franchise be by ordinance, see W. Va. Code, § 8-11-3.

Sec. 38. Same--Advertisement of application; submission to voters.

When any franchise, permit or license granting the right to use the streets, alleys, or public grounds, shall be applied for, the application or petition shall be advertised in two newspapers, published in said city, thirty days before the same shall be heard and determined by the council; and any ordinance granting such rights and franchises shall, on the petition of ten per cent of the votes cast

for all candidates for the office of mayor at the last preceding election, be submitted to the voters at a special election, for adoption or rejection, which shall be by a majority of the votes cast; said election to be held and conducted as other municipal elections are held; except that all of the expenses of said election shall be borne by the party or corporation desiring said rights and franchise.

All such ordinances shall protect the interests of the city, as provided in section thirty-seven, as well as such additional conditions, compensations or limitations as council may prescribe. (Acts 1929 (Muni. ch.), ch. 4, § 38.)

Sec. 39. Committees of council; adjournment of council meetings; postponement of announcement of vote.

Council shall have the right to appoint such committees of its own body as it may deem proper, and may give such committees power and authority to perform any duties and make any reports to council concerning the duties of council, and council may adjourn its meetings from time to time, pending the consideration of any matter, franchise or ordinance, and may postpone the announcement of any vote to an adjourned meeting or to a future meeting. (Acts 1929 (Muni. ch.), ch. 4, § 39.)

Sec. 40. Style of ordinances.

The style of all ordinances enacted by the council shall be "Be it Ordained by the Council of the City of Charleston." (Acts 1929 (Muni. ch.), ch. 4, § 40.)

Sec. 41. Passage of ordinances; revision, reenactment or amendment; effective date; publication of caption or title; resolutions and orders.

No ordinance shall be passed, except by bill, and no bill shall be so amended in its passage as to change its original purpose. All bills must be in writing and read in full when presented at a regular or special meeting of council, and except in case of emergency and when so authorized by a vote of four-fifths of the members elected, taken by yeas and nays, no bill shall be considered for final passage at the meeting at which it is introduced; but at any subsequent regular or special meeting bills may be taken up for consideration and final action. No bill except in case of emergency evidenced by a vote of four-fifths of the members of council elected shall be considered for final passage unless the same has been referred to a committee for report. All amendments made by a committee to a bill shall be reported to council and incorporated in said bill, and before final action on said bill, the bill with any amendments shall be fully and distinctly read, after which reading, whether at the meeting at which the bill is reported or a subsequent meeting, the bill may be considered for final action. No bill shall become an ordinance unless on its final passage the vote be taken, the names of the members voting for and against ~~the same~~ be entered of record in the minutes of council, and a majority of all members elec-

ted recorded thereon as voting in its favor. Bills referred to a committee may be withdrawn therefrom at any subsequent meeting for present consideration by an affirmative vote of a majority of the members of council present. No bill except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated, and bills fixing the annual salaries of officers and employees of the city, and bills, providing for the paving or improving of streets, or construction of sewers, shall contain more than one object and that shall be expressed in the title, but if any object shall be embraced in an ordinance which is not so expressed the ordinance shall be void only as to so much thereof as shall not be so expressed. No ordinance shall be revised or re-enacted by mere reference to the title thereof, but the same shall be set forth at length as if it were an original ordinance, nor shall any ordinance be amended by providing that, designated words thereof be stricken out and others inserted in lieu thereof, but the ordinance or sections amended shall be set forth in full as amended. All ordinances in force at the time [March 6, 1929] this act [this Charter] goes into effect, not inconsistent herewith, shall remain in full force until altered or repealed as herein provided, and all rights, actions, prescriptions and contracts of the city not inconsistent therewith shall continue to be valid as if this act had not been passed.

For state law as to powers and duties of municipal governing bodies with respect to ordinances and ordinance procedures, see W. Va. Code, § 8-11-1 et seq.

Any ordinance heretofore passed which may be void on account of failure of council properly to observe any provisions of the Charter of the City of Charleston or ordinances in force at the time said ordinance was passed shall so far as it may affect the validity of any paving or sewer assessments heretofore laid, be in full force and effect until repealed or amended, the same as if legally passed. No ordinance of the council shall take effect until the expiration of five days after its final passage, unless the council shall by a vote of three-fifths of its members elected, taken by yeas and nays, otherwise direct. It shall be the duty of the city clerk to make publication of the caption or title of every ordinance in a newspaper of general circulation in the City of Charleston within five days after its passage, but failure so to do shall not affect the validity of any such ordinance.

For state law providing that, "notwithstanding any charter provision to the contrary," it shall not be necessary, except as provided in the W. Va. Code, to publish a proposed or enacted ordinance in a newspaper, see W. Va. Code, § 8-11-4, subsec. (a).

Resolutions and orders of council other than ordinances may be considered for final passage at the meeting at which they are proposed, and shall, unless otherwise provided therein, be in force and effect from and after their passage. (Acts 1929 (Muni. ch.), ch. 4, § 41.)

Sec. 42. Ordinances to be spread on records of council; "ordinance record"; code of ordinances.

All ordinances passed, shall be spread in extenso upon the records of the council when adopted. The council shall also provide a well-bound book designated as "Ordinance Record," in which shall be copied by the city clerk all ordinances, in the order in which they are passed, which ordinances, when so copied, shall be compared with the originals by the mayor and shall be signed by him when found correct. Such books shall be indexed so as to show in brief form the substance of the ordinance, and shall be received by all courts and justices in this state as evidence, but the council may adopt by ordinance properly designating and describing it, a code of laws and ordinances, which when adopted shall be printed in book form, or said council may designate any committee, or attorney, or the city solicitor to prepare a code of ordinances for the government of the City of Charleston, and said council may by ordinance adopt the code so prepared as a whole, and when said ordinance adopting said code shall have been passed by the council, the said code shall be and become the law and ordinances of said city, and may be printed by order of the council, and the same shall be so received as evidence of what is printed therein, until errors or omissions be affirmatively shown therein. (Acts 1929 (Muni. ch.), ch. 4, § 42.)

For state law requirement that ordinances adopting technical codes by reference be certified by mayor and made a permanent record in office of the recorder (city clerk), see W. Va. Code, § 8-11-4, subsec. (b).

Sec. 43. Officers conservators of the peace.

All persons elected or appointed to the offices named in this act [this Charter] shall be conservators of the peace within said city, and they, and any other officer provided for under this act, may be given authority of police officers by the council. (Acts 1929 (Muni. ch.), ch. 4, § 43.)

Sec. 44. Powers and duties of municipal judge; maximum imprisonment for violation of ordinance; appeal; expense of maintaining persons committed to county jail.

The municipal judge shall be ex officio a justice and a conservator of the peace, and with authority to issue processes for all offenses committed within the police jurisdiction of the City of Charleston, of which a justice of the peace has jurisdiction under state statutes, and for all violations of any city ordinances, and shall have charge of and preside over the municipal court of such city; and may commit persons charged with felony or misdemeanor to jail or take bond for their appearance before the grand jury of the circuit, intermediate or other courts of Kanawha County; he shall keep an accurate record of all his judicial proceedings in said court, showing the style of each case, which

record shall be indexed and numbered. It shall be his duty to hold daily sessions of his said court, Sunday excepted. Before trying any person charged with any violation of any state law or ordinance a warrant specifying the offense or violation charged shall be issued as herein provided and the municipal judge shall render judgment in any case as the law of the state or the ordinance of the city applying thereto may require; he shall also have the power to issue executions for all fines, penalties and costs imposed by him and he may require immediate payment thereof, and in default of such payment, may commit the party so in default to the jail of the City of Charleston or of the County of Kanawha, or other place of imprisonment in said city, until the fine and penalty and costs shall be paid or satisfied, to be employed during the term of imprisonment as hereafter provided, but for violation of any city ordinance the term of imprisonment in any such case shall not exceed thirty days, and in all cases where a person is sentenced to imprisonment or to the payment of a fine of ten dollars or more, such person shall be allowed an appeal from such decision to the intermediate court of said Kanawha County upon the execution of an appeal bond, with surety deemed approved by the said municipal judge or municipal court clerk in a penalty double the amount of the fine and costs imposed by said judge, conditioned that the person proposing to appeal will appear before the intermediate court of Kanawha County on the first day of the next term thereof to answer for the offense wherewith he is charged and not depart thence without leave of the court and to satisfy all costs and fines imposed against him; and in no case shall judgment for a fine of less than ten dollars be given by the municipal judge if the defendant, his agent or attorney object thereto. When the judgment on appeal is against the appellant for any sum of money, judgment shall be rendered by the intermediate court against the appellant and those who signed the appeal bond as surety thereon. Before said municipal judge or clerk shall accept any natural person as surety upon any bond or recognizance under the provisions of this section, such surety shall furnish a certified statement of the clerk of the county court of any county in this state in which such surety owns real estate, and shall also file an affidavit, the form of which may be prescribed by the municipal judge, showing the bonds and recognizances upon which he is then surety and the amount of each bond or recognizance. If the amount of such bond or recognizance, together with other bonds and recognizances as shown by the affidavit aforesaid, exceeds in amount the assessed value of the surety's property as shown by the certificate of the clerk of the county court, of if any such bond or recognizance theretofore given, by such surety be forfeited and unsatisfied, then such surety shall be disqualified; and if any bond or recognizance be accepted and it subsequently appears that the surety thereon is disqualified then such bond shall be declared void by the municipal judge and the person whose appearance in the intermediate court of Kanawha County and whose payment of fine and costs are thereby secured may be forthwith apprehended and held in the city jail until a proper bond or recognizance is given; provided, however, that whenever any surety is offered less than one hour before the county clerk's office is closed or after it is closed, surety shall make an affidavit that he owns real estate in Kanawha County to an assessed value above encumbrances thereon, of at least double the amount of bond required. Any person making or procuring to be made a false statement in any such affidavit, with intent to deceive said municipal judge, shall be guilty of perjury. If such appeal be taken, the warrant of arrest, the transcript of the judgment, the appeal bond and other papers of the case shall be forthwith delivered by

the said judge to the clerk of the intermediate court and the court shall proceed to try the case as upon indictment or presentment and render such judgment, including that of costs, as the law and the evidence may require.

On appeals from said municipal court the intermediate court of Kanawha County shall be governed by the same principles with respect to the forfeiture of bonds and recognizances, and the issuance and execution of capiases and writs of fieri facias as prevail in cases in which the state is a party.

The expense of maintaining persons committed to the jail of the county by such municipal judge shall be paid by the city. The municipal judge shall account for and pay over the amount of all fines collected by him weekly to the treasurer of the city and shall make monthly reports thereof, and of all other matters, pertaining to his office to the council of said city. (Acts 1929 (Muni. ch.), ch. 4, § 44.)

For state law as to justices of the peace, see W. Va. Code, ch. 50. As to criminal procedure, see W. Va. Code, ch. 62.

Sec. 45. Qualifications of municipal judge; not to appear as counsel in criminal cases; absence or inability to perform duties; bond.

The municipal judge shall be an attorney-at-law and shall have attained the age of twenty-eight years at the date of the beginning of his term of service and shall have been a resident of this state for the period of five years and of the City of Charleston previous to the beginning of his term of service for the period of five years. He shall not appear as counsel in any criminal case in any court during his term of service. In the absence of, or in case of the inability of the municipal judge to perform his duties, the municipal court clerk shall act as municipal judge in his stead, and in the event that neither the municipal judge nor the municipal court clerk can for any cause perform such duties, then the mayor shall act as municipal judge. The official bond of a justice of the peace shall not be required of the municipal judge. (Acts 1929 (Muni. ch.), ch. 4, § 45.)

Sec. 46. Bail.

In all cases of arrest by the police of the city, except in cases of murder and rape, the person arrested shall have the absolute right to give a reasonable and proper bond for his appearance at police court [municipal court] for a trial of his case, and the municipal judge, city clerk, municipal court clerk, mayor, chief of police and the desk sergeant or person in charge of police headquarters shall have the power, and it shall be their duty, to accept such bond from such person so arrested, and upon the giving of such bond he shall be released, and it shall be their further duty to permit such person arrested to communicate in any reasonable way with any person or persons with whom he may desire to

have communication in reference to his giving bail in order to obtain his release, and each of said officers and all policemen shall render reasonable aid in assisting such person arrested to communicate with any person that he may desire for the purpose of securing such bail. In case one so arrested fail to give bond as aforesaid, the municipal judge, or if said judge be not then sitting, either of the officers named above may order such person committed to the city jail for safe keeping until the trial of his case. (Acts 1929 (Muni. ch.), ch. 4, § 46.)

For constitutional provision as to excessive bail, see W. Va. Const., art. III, § 5.

Sec. 47. Authority of council, manager and police officers relating to nuisances: duties and responsibilities of owners and occupants of property; enforcement.

Watement

The manager of said city shall have authority to abate and remove all nuisances in said city. He may compel the owners, agents, assignees, occupants or tenants of any lot, premises, property, building or structure, upon or in which any nuisance may be, to abate and remove the same by orders therefor, and the council shall by ordinance provide a penalty for the violation of such orders. Council may by ordinance regulate the location, construction, repair, use, emptying and cleaning of all water closets, privies, cesspools, sinks, plumbing drains, yards, lots, areaways, pens, stables and other places, where offensive, unsightly, unwholesome, objectionable or dangerous substances or liquids are, or may accumulate, and provide suitable penalties for the violation of such regulations, which may be enforced against the owner, agent, assignee, occupant or tenant of any premises, or structure where such violation may occur. It shall be the duty of all police officers to report to the manager the facts as to the existence of any nuisance known to them.

If the owner, agent, tenant, assignee or occupant of any such premises, lot, property, building or structure, as is mentioned herein, shall fail or refuse to abate or remove any such nuisance, as mentioned herein, or to comply with the provisions of any such ordinance and the regulations herein contained, the manager may have said nuisance abated or the provisions of said ordinances carried out, after reasonable notice to said owner, occupant, tenant, agent or assignee of his intention so to do, and collect the expenses thereof, with one per centum per month interest added from the date of said notice, from the said owner, occupant, tenant, agent or assignee, by distress or sale, in the same manner in which taxes levied upon real estate for the benefit of said city are herein authorized to be collected, and the expense shall remain a lien upon said lot, or part of lot, the same as taxes levied upon real estate in said city; which lien may be enforced by a suit in equity before any court having jurisdiction, as other liens against real estate are enforced. In case of non-resident owners of real estate such notice may be served upon any tenant, occupant, assignee or rental agent, or by publication thereof once a week for not less than two consecutive weeks in two newspapers of opposite politics, published in said city.

And in all cases where any tenant, occupant or agent is required to abate and remove any nuisance under the provisions of this section, or comply with

the provisions of any such ordinance as is mentioned herein, the expense thereof may be deducted out of the accruing or accrued rent of said property or amount due said owner from said agent, and such tenant, occupant or agent may recover the amount so paid from the owner, unless otherwise especially agreed upon.

Any expense incurred by the manager as herein provided, in the manner aforesaid, may be collected in the manner herein provided, notwithstanding the imposition of any other penalty or penalties upon any of the persons named herein, under any of the provisions of this act [this Charter]. The abatement or removal of any such nuisance by the city at the expense of said city, as herein provided, shall be prima facie proof that the said notice to the owner, occupant, agent or assignee was given as herein prescribed. (Acts 1929 (Muni. ch.), ch. 4, § 47.)

Sec. 48. Connection with sewer system.

The manager may require all owners, tenants or occupants of improved property which may be located upon or near any street or alley along which may be extended any sewer or system of sewerage, which the said city may construct, own or control, to connect with such sewer, or system of sewerage, all privies, ponds, water closets, cesspools, drains or sinks, located upon their respective properties or premises, so that their contents may be made to empty into such sewer or system of sewerage. (Acts 1929 (Muni. ch.), ch. 4, § 48.)

For state law as to authority of municipalities to require sewer connections, see W. Va. Code, § 8-18-22.

Sec. 49. Construction of sidewalks, curbs and gutters; duty of county clerk to record assessments.

The council shall have the right and authority to establish the width of any sidewalk on any street, alley or public square, or any portion thereof in said city, to cause to be put down a suitable curb of brick, stone or other material alone for the footways and sidewalks of the streets, alleys or public squares or portion thereof, and to order the construction, relaying and repair of sidewalks and gutters of such material and width, and in such manner, as the council may reasonably prescribe by the owners or occupiers of the lots or parts of lots facing upon said streets, alleys and public squares; and in case of a failure or refusal of any such owners or occupiers of the lots or parts of lots to construct, re-lay or repair such sidewalks and gutters, when required, it shall be lawful for the council to have such sidewalks and gutters constructed, re-laid or repaired, and levy and collect the expense thereof, with one per centum per month interest added after a demand of thirty days has been made by the treasurer of the city from the said owner, owners, occupier, occupiers or any of them; and in all cases of such assessment, whether for the construction, re-laying or repairing of sidewalks or gutters, payment thereof shall be made to the treasurer

within thirty days after the completion of the work and demand made, and if not so paid the city is hereby authorized to collect or cause to be collected the expense thereof, with one per centum per month interest added after work has been completed and a demand of thirty days, and they shall have the power to collect, or cause to be collected, the same from said owner, owners, occupier or occupiers or any of them, by distress and sale, in same manner in which taxes levied upon real estate for the benefit of the said city are herein authorized to be collected, and in addition there shall be a lien upon the real estate against which such assessment has been levied for the construction, re-laying and repairing of sidewalks and gutters as herein provided, which lien may be enforced by a suit in equity before any court having jurisdiction, as other liens against real estate are enforced, and it shall be the duty of the city clerk to cause to be certified to the clerk of the county court of Kanawha County the order laying an assessment authorized by this section. The clerk of the county court of Kanawha County is hereby required to record and index such assessments in the proper trust deed book in the name of persons against whose property assessments appear therein; provided, however, that a reasonable notice shall first be given to said owner or occupier or their agent, that they are required to construct, re-lay or repair such sidewalks or gutters. In case of non-residents who have no known agent in said city, such notice may be given by publication for a period not less than once a week for two consecutive weeks in any newspaper printed in said city; and in all cases where a tenant shall be required to construct, re-lay or repair sidewalks or gutters in front of the property of his or her occupancy, the expense of such construction or re-laying or repairing may be deducted out of the accruing rent of said property, and he may recover the amounts paid from the owner; unless otherwise especially agreed upon. The laying or construction of any such sidewalks by said city shall be prima facie proof that the said notice to the owner (resident or non-resident) or occupier, or their agent, was given as herein required. (Acts 1929 (Muni. ch.), ch. 4, § 49.)

Sec. 50. Annual estimate for tax levy.

The council shall ascertain the total expense of the city to be provided for by levy for the fiscal year in which said levy is made, and it shall make a detailed itemized estimate of the sum of money necessary to pay interest accruing on the bonded indebtedness of said city, the amount required for the several sinking funds for the reduction of the principal thereof, the amounts necessary for the support of the various departments of the city and for the improvements of its streets, alleys, avenues and public grounds, real and personal property, contingent expenses and other expenses, together with an itemized statement of the estimated receipts other than that to be derived by the annual levy, and after receiving such estimates, and before making the levy, it shall apportion the rate thereof, including the estimated receipts from licenses and all other sources among the several funds so ascertained and provided for, which apportionment shall be spread upon the records of this city, and in making said estimate, providing for the revenue for the fiscal years, etc., it shall be the duty of the council strictly to observe all the provisions of chapter 9 of the Acts

of the Legislature, 1908, entitled, "An act to regulate the rate and manner of laying levies for taxation in counties, magisterial and school and independent school districts, and municipal corporations, and to provide penalties for the illegal expenditure of public moneys, incurring of illegal obligations and the laying of illegal levies by any tax levying body, and for the distribution of a portion of the school fund," [now codified as art. 8, ch. 11 of the Code of West Virginia] and all amendments thereto, except where said last named act shall be inconsistent with this act [this Charter] as to limit of taxation. (Acts 1929 (Muni. ch.), ch. 4, § 50.)

For state law as to municipal general property and benefit taxes, see W. Va. Code, § 8-13-1. As to levy estimates by municipalities, see W. Va. Code, § 11-8-14.

Sec. 51. Authority to levy and collect taxes: limit of taxation.

The council shall have authority to levy and collect an annual tax on real estate and personal property in said city and to impose a license and assess a tax on all dogs kept within the city and to impose a tax upon all other subjects of taxation under the several laws of the state, which shall be uniform with respect to persons and property within the jurisdiction of said city, and shall only be levied on such property, real, personal and mixed, on which the state imposes a tax; provided, that with the exception of the special levies authorized by law, no greater levy shall be laid by said council on the taxable property of said city than fifty cents upon each hundred dollars of the assessed valuation of the property of the municipality; and, provided, further, that the council shall, in making such levy, be subject to all provisions of chapter 9 of the Acts of the Legislature of 1908 [now codified as art. 8, ch. 11 of the Code of West Virginia] and any and all amendments thereto, except as herein provided. There shall be a tax of two dollars annually assessed on each and every male inhabitant of said city over the age of twenty-one years who is subject to a capitation tax under the laws of the State of West Virginia. The same shall be set out and included in the personal property book against every such inhabitant, and shall be collected under the authority of the city at the time of collecting other levies and taxes. (Acts 1929 (Muni. ch.), ch. 4, § 51.)

Editor's note.--Sec. 2 of art. 10 of the W. Va. Const., and sec. 8-13-3 of the W. Va. Code, relating to capitation taxes, have been repealed; the city no longer imposes a capitation tax. For additional limitations on taxation of property, see W. Va. Const., art. 10, § 1.

Sec. 52. Collection of taxes.

The city taxes annually levied by the council shall be collected as follows: Immediately after the annual levy for city taxes is laid the council shall direct

the proper officer of the city to extend the same on the property books made out by him, including therein the proper capitation tax; he shall make out therefrom proper tax tickets in the following manner: That is to say, instead of a single ticket for the whole amount charged to any person, firm or corporation there shall be two tickets, each for one-half of said amount: these half tickets shall be severally numbered or designated "first" and "second" and the same, after being examined and compared by the council and found to be correct, shall be turned over to the treasurer of the city on the first day of October following the levy and the treasurer's receipt for the gross amount thereof shall be returned, entered upon its record and the treasurer charged therewith. The treasurer shall give notice by publication for twenty days in two newspapers of opposite politics published in said city, that said tickets are in his hands for collection stating the penalty for nonpayment thereof and the time and place when the same may be paid; provided, however, that the taxpayers shall have the right to anticipate the payment of the whole or any part of the taxes assessed against them.

The one-half ticket designated "first" may be paid to the treasurer of the city any time before the first day of November next succeeding said levy; the one-half ticket designated "second" may be paid to the treasurer of the city at any time before the first day of May next succeeding said levy. To all the half tickets designated "first" remaining unpaid in the treasurer's hands on the said first day of November succeeding said levy, a penalty of ten per cent shall be added and collected from the taxpayers. To all half tickets designated "second" remaining unpaid in the treasurer's hands on the first day of May succeeding said levy a penalty of ten per cent shall be added as a penalty and shall be collectible from the taxpayers. On said first day of November succeeding said levy all such half tickets designated "first" and on said first day of May succeeding such levy all such half tickets designated "second" remaining unpaid in the treasurer's hands shall be taken up by the council and settlement had with said treasurer on said days respectively, or on the next succeeding days, respectively, if said days shall fall upon Sunday, and thereupon the council shall place said tickets in the hands of the city collector for collection and shall take his receipt therefor; provided, however, that the council shall have the power any year, by resolution, to extend the time within which the tickets may remain in the treasurer's hands and be paid to him without adding the penalty, for a period named therein not exceeding, however, a total of fifteen days.

The city collector shall have the power to collect said tickets so placed in his hands, together with the penalties thereon herein provided to be added thereto, and the compensation of such city collector for making such collection of the taxes aforesaid shall be fixed by the council.

The city collector shall be charged with the gross amount of said tax tickets so delivered to him for collection, including the penalties accrued thereon so delivered, and no deduction therefrom shall be allowed, unless on or before the first day of August of each year he makes out and returns to the council a delinquent list of taxes uncollected for such year, with his oath at-

tached hereto, stating that such list is correct and just and that he has received no part of the taxes mentioned therein, and that he has used due diligence to find property liable to distress for taxes, has found none, and that he could not collect the same.

Neither the treasurer nor the city collector shall take or collect anything but money for payment of taxes. (Acts 1929 (Muni. ch.), ch. 4, § 52.)

Editor's note.--Most of the provisions of §§ 52, 53 and 54 of the Charter have become obsolete due to changes in the Constitution and the Code of West Virginia. Const. art. 10, § 2 and W. Va. Code, § 8-13-3, authorizing a capitation tax, have been repealed. W. Va. Code, § 11A-1-4, provides that the sheriff of the county shall collect all taxes levied in his county, and § 11A-1-15 requires him to pay into the municipal treasury each month all taxes collected for the municipality. Other provisions of Charter §§ 52 through 54 have also been superseded by W. Va. Code, ch. 11A, which relates to the collection and enforcement of property taxes.

Sec. 53. Powers of collector.

The city collector shall have the power to collect the city taxes placed in his hands except as otherwise provided in this act [this Charter], and he shall also have power to collect the city claims which may be placed in his hands by the council for collection, except that fines imposed by the municipal judge shall not be collected by him. (Acts 1929 (Muni. ch.), ch. 4, § 53.)

Editor's note.--See editor's note following text of sec. 52, insofar as it relates to collection of taxes as distinguished from city claims and fines.

Sec. 54. Distress for collection of taxes.

All goods and chattels belonging to a person, firm, corporation or estate, assessed with any city taxes, whether the same be a capitation tax or a tax upon real estate or personal property or an assessment for paving or other improvements, shall be liable for said tax, and may be distrained therefor in whosoever's possession they may be found, and the city collector shall have the same power to collect said tax or assessment from any person owing a debt to or having in his possession any estate belonging to a person assessed with any tax or assessment of any kind that the sheriff has to collect state taxes in such cases. The city collector may distrain and sell for all city taxes and assess-

ments and in all respects have the same power to enforce the collection thereof as the sheriff has to enforce the collection of state taxes. (Acts 1929 (Muni. ch.), ch. 4, § 54.)

Editor's note.--See editor's note following text of sec. 52, insofar as it relates to collection of taxes, as distinguished from assessments for paving or other improvements not turned over by the city to the sheriff for collection as taxes.

Sec. 55. Lien on real estate for taxes--Established: enforcement by suit in court of record: priority of lien.

There shall be a lien upon all real estate within said city for the city taxes assessed thereon, including such penalties added thereto for non-payment thereof as are prescribed by this act [this Charter], from the first day of January of the year in which said taxes are assessed. Said liens may be enforced by appropriate suit in any court of record in Kanawha County; provided, such suit be instituted within five years from the time the said liens attached as herein provided, and such suit may either be instituted by and in the name of the City of Charleston as plaintiff, or said city may intervene by petition in any suit pending to sell or enforce liens against any real estate which is subject to such lien for said taxes. The liens herein created shall have priority over all other liens except those for taxes due the state. (Acts 1929 (Muni. ch.), ch. 4, § 55.)

For state law as to attachment of lien on real property for taxes assessed thereon, see W. Va. Code, § 11A-1-2. As to collection of taxes by appropriate court action, see W. Va. Code, § 11A-2-2.

For a case construing language of a prior city Charter somewhat similar to the language of sections 55 and 56 of the present city Charter, see Horn v. City of Charleston, 91 W. Va. 73, 112 S.E. 239 (1922).

Sec. 56. Same--Enforcement by tax sale.

Said liens for city taxes and attendant penalties may also be enforced by certifying the same to the clerk of the county court of Kanawha County for certification to the state auditor, and the same may be certified down by said auditor, and sold for taxes, interest, penalties and commissions thereon, in the same manner, at the same time, and by the same officer as real estate is sold for taxes, interest, damages, cost and commission due the state thereon, which

officer shall account therefor on settlement with the city and pay over the same to the treasurer of the city. (Acts 1929 (Muni. ch.), ch. 4, § 56.)

Editor's note.--Due to changes in state law since 1929, when the provisions of Barnes' West Virginia Code Annotated, 1923, ch. 31, was in effect, and on which this section is based, this section is obsolete. Real estate tax sales are now conducted by the sheriff of Kanawha County pursuant to the provisions of W. Va. Code, ch. 11A, art. 3.

Sec. 57. Limitation on authority of county to tax persons and property within city for streets, education or poor outside city limits; control of streets and schools within city; joint ownership of bridges.

No taxes or levies shall be assessed upon or collected from the taxable persons or property within the corporate limits of said city, for the construction, improvement or keeping in repair of roads, or the building, leasing or repairing of school houses, or the purchase of lands for the same, or for the support of schools, or for the support of the poor of Kanawha County, outside of said corporate limits, for any year in which it shall appear that said city shall at its own expense provide for its own poor and keep its own roads, streets, sewers and bridges in good order. And neither the county court of Kanawha County nor the authorities of the district in which said city is situated, shall have or exercise jurisdiction within the corporate limits with relation to the roads, streets, alleys, bridges, wharves, docks, ferries, schools or school houses, but the same shall be and remain under the exclusive jurisdiction and control of the municipal authorities of said city, except that the board of education in the independent school district of the City of Charleston shall have jurisdiction, supervision and control of the schools and school houses in said district; and said city shall be liable only for the construction, improvement, repair and good order of the roads, streets, sewers, alleys, wharves and bridges in its corporate limits, except that the County of Kanawha may become a joint owner and controller with the City of Charleston in a bridge or bridges across Kanawha River. (Acts 1929 (Muni. ch.), ch. 4, § 57.)

Sec. 58. Depositories.

It shall be the duty of the treasurer of the city to keep all funds of the city in some bank or banks within said city, which shall pay interest on such deposits and which shall pay interest on the average daily balance of such funds in all accounts of the per cent equal to that paid by state depositors on all funds of the State of West Virginia and in the same manner and at the same time. If no bank within the city is willing at any time to receive deposits of the treasurer and to pay such interest thereon, the treasurer shall report this fact to the

council, who shall thereupon designate a bank or banks in which he shall deposit said funds for the time being and until some bank in said city will receive such deposits on such terms. Before receiving any such deposits such bank or banks shall give bond in such penalty as the council shall prescribe, and with securities to be approved by said council, conditioned for the prompt payment, whenever lawfully required, of all the city moneys or parts thereof which may be deposited with them, which bond shall be renewed at such times as the council may require. (Acts 1929 (Muni. ch.), ch. 4, § 58.)

For state law as to state depositories, see W. Va. Code, ch. 12, art. 1.

Sec. 59. Bonds--Authority to issue; purposes; interest; limit; taxation to pay interest and principal.

The City of Charleston is hereby authorized to issue and sell bonds of said city, for the purposes of buying and building bridges, electric light plants, water works, gas lines and fields, and other public utilities; and for the purpose of acquiring and providing land for public parks, public streets, avenues and alleys, airports and other public grounds, and acquiring or assisting in acquiring property to be donated, dedicated or conveyed to, or otherwise vested in, the State of West Virginia, as a site for a state capitol and other public buildings, which donation, dedication and conveyance are hereby authorized to be made, and also to provide ground for and erect an incinerator plant or garbage crematory, or other plant or means for the disposal of garbage and refuse; and such bonds shall be sold for not less than par, and shall be payable in a period not to exceed thirty-four years, and shall bear interest, not to exceed six percentum per annum; and in the issuance and sale of said bonds the city shall be governed by all the restrictions of the Constitution of this state and the statutes of this state, with respect to the issuance and sale of other bonds; provided, that said city shall not, by the sale or issue of bonds for the purposes above mentioned, cause the aggregate of its indebtedness, of every kind whatever, to exceed five per centum of the value of the taxable property therein, but may for the above purposes issue bonds to the maximum limit of said five per cent; nor shall said city make such issue and sale of bonds without, at the same time, providing for the collection of a direct annual tax sufficient to pay annually the interest on the same, and a sinking fund to pay the principal within the time for which said bonds shall be issued. (Acts 1929 (Muni. ch.), ch. 4, § 59.)

For state law as to municipal public works and revenue bond financing, see W. Va. Code, ch. 8, art. 16. As to public bonded indebtedness generally, see W. Va. Code, ch. 13.

Sec. 59-a. Same--For improvement of streets.

The City of Charleston is hereby authorized to issue and sell bonds of said city, for the purpose of paying the city's part of the cost of grading, curbing, paving, sewering or otherwise improving the avenues, streets, roads and alleys of said city, and for the purpose of providing funds to cover all or any part of the cost of grading, curbing, paving or sewering that may be assessed against abutting property owners in the manner provided for by law; and said city is hereby given full power to employ the proceeds of such bonds in the purchase of paving certificates or other permanent improvement certificates issued under the provisions of the Charter and made liens or assessments against real estate in said city, at not to exceed their par value, and may hold and collect or otherwise dispose of the same; provided, that said city shall not by the sale or issuance of bonds for the purposes above mentioned, cause the aggregate of its indebtedness, of every kind whatever, to exceed five per centum of the value of the taxable property therein.

The proceeds of any bond issue, authorized under this section, shall be set aside as a separate fund, and all special assessments covering improvements, the cost whereof has been advanced out of this fund, shall be paid into and become a part of said special fund and be used for the same purpose and in the same manner as the proceeds of said original fund.

This fund shall continue to be used for the purposes mentioned herein, until such time as the city's part of the cost of grading, curbing, paving, sewering or otherwise improving the avenues, streets, roads or alleys of the city equals the original proceeds of the bond issues authorized for the purposes mentioned herein. The issuance and sale of bonds, authorized by this section, shall be governed by all of the restrictions of the Constitution of this state and statutes of this state with respect to the issuance and sale of other bonds of said city. No issuance and sale of bonds, under this section, shall be made, unless at the same time provision is made for the collection of a direct annual tax, sufficient to pay the annual interest on the same and create a sinking fund to pay the principal within the time for which said bonds shall be issued. The direct annual tax, provided for in this section, shall be set aside as a separate fund, to be known as an interest and sinking fund. All interest collected on special assessments authorized or referred to in this section shall be placed in and become a part of said special interest and sinking fund, until the principal and interest of said bonds are paid.

Whenever, in the opinion of the council, the special improvement fund created by this section, or any part thereof, is no longer needed the council may order direct that said special assessments, when collected, be applied to retiring such of the bonds provided for herein, as may be outstanding at that time. (Acts 1929 (Muni. ch.), ch. 4, § 59-a.)

For state law as to municipal public works and revenue bond financing, see W. Va. Code, ch. 8, art. 16. As to public bonded indebtedness generally, see W. Va. Code, ch. 13.

Sec. 60. Same--In anticipation of special assessments for street improvements or sewer construction; limitation on indebtedness.

The City of Charleston is hereby authorized to issue and sell the bonds of the said city for the purpose of providing for grading, paving and otherwise improving the streets and alleys of said city or constructing sewers for the proper drainage of same in anticipation of special assessments to be made upon the property abutting upon the streets and alleys so improved, or property so sewered or drained, and such bonds may be in such an amount as shall be sufficient to pay the entire estimated cost and expense of said improvements, for which such special assessments are levied; provided, that the price for which said bonds are sold shall not be below par value thereof; said bonds may be payable in groups of one-fifth of the whole issue payable in two, four, six, eight and ten years respectively, and all payable in not to exceed ten years from the date of issue thereof, and shall bear interest at a rate not exceeding six per centum per annum, payable annually; and in the issuance and sale of said bonds, the city shall be governed by all the restrictions and limitations of the Constitution of this state and the restrictions and limitations of the statutes of this state with respect to the issuance and sale of other bonds, and the assessments as paid and provided for in this act [this Charter] shall be applied to the liquidation of said bonds and the interest thereon; and if by reason of the penalties collected with the delinquent assessments, there be any balance after the payment of said bonds and all accrued interest and costs, the said balance shall be turned into the city treasury to the credit of the interest and sinking fund of the city.

Provided, that said city shall not by the sale or issue of such bonds cause the aggregate of its debt of every kind whatsoever to exceed five per centum of the value of the taxable property therein; and provided, further, that nothing herein contained shall be construed as authorizing said city to become indebted in any other manner or for any other purpose, to an amount including the existing indebtedness in the aggregate exceeding two and one-half per centum on the value of the taxable property therein (as provided in chapter 51 of the Acts of 1905)* except for the purpose of grading, paving, sewering and otherwise improving the streets and alleys of said city and as provided for in this act [this Charter], and except for the purpose of buying or building bridges, electric light plants, water works, gas lines and fields and other public utilities; nor shall they make such issue and sale of bonds for grading, paving, sewering and improving the streets and alleys of said city without, at the same time, providing for the collection of a direct annual tax sufficient to pay annually the interest on such debt and principal thereof within a period not exceeding ten years.

*Editor's note.--Acts 1905, ch. 51, § 1, reads as follows: "No county, city, school district or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed

to become indebted, in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding two and one-half per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax sufficient to pay annually the interest on such debt, and the principal thereof within and not exceeding thirty-four years; provided, that no debt shall be contracted under this section, unless all questions connected with the same shall have been first submitted to a vote of the people, and have received three-fifths of all the votes cast for and against the same." Section 2 provides that the act shall not take effect until Jan. 1, 1906.

All assessments, interest and penalties thereon, collected from the abutting property owners, on account of grading, paving, sewering or otherwise improving the streets and alleys of such city under the provisions of this act [this Charter], shall annually be applied to the annual tax required to pay the interest on such debt and such principal within and not exceeding said period of ten years and in the event that the assessments, interest and penalties so called do not amount to a sum sufficient to pay annually the interest on such debt, said city shall collect so much of said levy as will pay annually the interest on such debt, and the principal thereof within and not exceeding ten years. (Acts 1929 (Muni. ch.), ch. 4, § 60.)

Editor's note.--This section is substantially in the language of Barnes' West Virginia Code Annotated, 1923, ch. 47, § 49c (1), including the reference to Acts 1905, ch. 51. That section of the 1923 Code, as subsequently amended, is now W. Va. Code, § 8-18-14.

For state law as to municipal public works and revenue bond financing, see W. Va. Code, ch. 8, art. 16. As to public bonded indebtedness generally, see W. Va. Code, ch. 13.

Sec. 61. Contracts for improvement of streets; assessment of cost.

Whenever the council of said city shall deem it expedient to cause any street or alley in said city or portion thereof to be paved, curbed or macadamized, or otherwise improved in a permanent manner; it shall order the work done in the following manner and upon the following terms: The contract for such paving or other improvements shall, after due advertisment in which the coun-

cil shall reserve the right to reject any and all bids, be let to the lowest reasonsible bidder. The contractor shall look only to the city for the payment of the work, and in no sense to the abutting land owners, except as hereinafter provided. The total cost of grading and paving or otherwise improving any such street or alley (with the exception that where a street is occupied by the street car tracks or other railways, such cost of opening or otherwise improving the distance between the rails and two additional feet outside of each rail, shall be borne and paid entirely by the street car or other railway company operating such street or other railway unless otherwise provided by the franchise of such street car or other railway company granted previous to the passage of this act [this Charter]), shall be borne by the owners of the land abutting upon said street, alley or portion thereof, according to the following plan, that is to say: Payment is to be made by all land owners on either side of such portion of a street or block so paved or improved in such portion of the total cost, less the portion, if any, chargeable to such street or other railway company, as the frontage in feet of his land so abutting bears to the total frontage of all lands so abutting on such street, alley or portion thereof so paved or improved as aforesaid.

When the paving of any street, or alley, or portion thereof shall have been let to contract and the work done as hereinbefore provided, it shall be the duty of the engineer of said city to cause the several frontages abutting thereon to be measured, and to calculate the assessment upon each and every land owner so abutting and to certify the same to the council, showing the proper amount to be determined, as provided in the foregoing plan. It shall be the duty of the council to examine and compare such assessment, amounts and names so certified to it, and thereupon give notice by publication once a week for two successive weeks in a newspaper of general circulation published in said city, that an assessment under this act [this Charter] is about to be laid against the abutting property for paving or improvements done on said streets, or alleys, describing the location of such paving or improvements, and any owner or owners thereof shall have the right to appear before said council, within two weeks from the first publication thereof, and move to correct an apportionment or assessment excessive or improperly made as charged, which correction said council shall have the power to make according to the intent of this act, and if found to be correct or when corrected by the council aforesaid, it shall enter the same, together with a description of the lots of land as to location, frontage, depth and ownership, so far as the same may be ascertained, upon its records and to enter in its records that such owners and lots be assessed and chargeable with the amount so ascertained to be borne by them respectively; and when so approved, certified and entered on record, the same shall be and constitute an assessment against said owners and lots for such respective amounts. And it shall be the duty of the council to immediately certify such assessment to the treasurer for collection as herein provided, and a copy of said order shall be certified by the city clerk to the clerk of the county court of Kanawha County, who shall record and index the same in the proper trust deed book in the name of each person against whose property assessments appear therein. The amount so assessed against said abutting land owners shall be paid in ten payments, as follows: That is to say, one-tenth of said amount, together with

interest on the whole assessment, shall be paid into the city treasury, before the first day of May next after said work is completed and said assessments have been certified to the county clerk. And a like one-tenth, together with interest for one year upon the whole amount remaining unpaid on or before the first day of May in each succeeding year thereafter until all has been paid, and each of said installments of one-tenth beginning with the first, shall bear interest on the amount of said installments as six per centum per annum from the date of record of same in the county clerk's office until paid; provided, however, that any abutting owner so liable for any portion of the cost of such paving shall have the right at any time after the same is certified as aforesaid to the treasurer for collection to anticipate the payment of any or all of said assessments and shall be allowed to pay the face of said assessments with interest at six per cent per annum only from the time of recordation to the time of payment. To each of such installments of assessments remaining unpaid in the treasurer's hands on the day herein specified for the payment thereof, a penalty of ten per centum on the principal sum shall be added and any assessment so remaining unpaid in the treasurer's hands on such date, shall be taken up on such settlements had with the treasurer on such dates, and thereupon place such assessments with the penalty added thereto, in the hands of the city collector to be treated and considered, and payment thereof enforced in all respects as hereinbefore provided for the collection of taxes due the city, and they shall be a lien upon the property liable therefor the same as for taxes, which lien may be enforced in the same manner as provided for taxes. The lien hereinbefore provided for shall have priority over all other liens except those for taxes due the state and shall be on a parity with taxes and assessments due the city, and shall be effective as of the date that the assessment is laid by the council. Whenever all such assessments, for paving, sewerage, macadamizing or other improvements shall be paid in full to the treasurer, he shall deliver to the party paying the same a release of the lien therefor which may be recorded in the office of the clerk of the county court of Kanawha County as other releases of liens, and whenever any such assessments shall not be in the hands of the treasurer for collection, but the same shall be shown to the satisfaction of the city auditor or other official performing the duties of auditor, to have been paid in full or any officer entitled to receive the same, such auditor or the mayor may in like manner execute such release. (Acts 1929 (Muni. ch.), ch. 4, § 61.)

For state law as to collection of assessments, see W. Va. Code, § 8-13-15.

For a case holding that, because of the requirement of this section that each owner of land abutting upon a street to be improved shall be charged with such portion of the total cost of the improvement as the frontage in feet of his land abutting the street bears to the total frontage of all lands so abutting, for the city to assess the cost charged to one such land owner to the other land owners would unbalance this statutory equation, see United States v. City of Charleston, 93 F. Supp. 748

(1950). This Charter section was construed therein as in pari materia with Char., §§ 88, 88b.

Sec. 62. Sewerage assessments against owners of abutting property; requiring connection with sewer; including cost of drains in cost of street improvement.

Whenever the council shall order the construction of any public sewer in said city, the owners of the property abutting upon any street in which such sewer shall be constructed, shall be charged with and liable for sewerage assessments as follows: When said sewer is completed the engineer of said city shall report to the council in writing the total cost of such sewer, and a description of the lots and lands as to the location, frontage, depth and ownership liable for such sewer assessment, so far as the same may be ascertained, together with the amount chargeable against each lot and owner, calculated in the following manner: The total cost of constructing and laying the sewer shall be borne by the owners of the land abutting upon the streets, alleys, right of ways or easements or portions thereof, in which the sewer is laid, according to the following plan: Payment is to be made by each land owner on either side of such portion of a street, alley, right of way or easement in which such sewer is laid, in such proportion as such frontage of his land upon said street, alley, right of way or easement bears to the total frontage of all lands so abutting on such street, alley, right of way or easement; provided, that the charge laid against any owner of property shall not exceed three dollars per linear foot of frontage on each side of the portion of such street, alley, right of way or easement in which any such sewer is laid. In case of a corner lot, frontage is to be measured along the longest dimension thereof abutting on such street, alley, right of way or easement in which such sewer is laid. Any lot having a depth of two hundred feet or more and fronting on two streets, alleys, right of ways or easements, one in the front and one in the rear of said lot shall be assessed on both of said streets, alleys, right of ways or easements, if a sewer is constructed in both such streets, alleys, right of ways or easements. Where a corner lot has been assessed on the end it shall not be assessed on the side, and where it has been assessed on the side, it shall not be assessed on the end. Thereupon said council shall give like notice by publication as is required in case of street paving assessments, and the same rights shall exist as to the persons and property affected and the same duty as to corrections by said council as are prescribed with reference to paving, which report shall in like manner be examined by the council, and if found to be correct, or corrected as aforesaid, and such estimated assessments to be a fair and equitable apportionment of the cost of such sewer upon the basis hereinbefore described, it shall enter an order upon its records, setting forth such location, depth, ownership and said amount of such sewer assessments, against each, respectively, calculated as aforesaid, and the entry of such order shall constitute and be an assessment for such proportion and amount so fixed therein against such respective owners and lots, and if after such advertisements, notice and hearing, said council shall find that such apportionment at

such rate is unjust or inequitable, and contrary to the intent of this act [this Charter], it shall ascertain, fix and assess the cost thereof among and upon the abutting owners respectively, justly and equitably and according to the intent hereof, and in like manner, assess and enter the amount so fixed respectively upon its records, and the council shall, in either event, thereupon certify the same to the treasurer for collection, and certify a copy of such order to the clerk of the county court of Kanawha County, who shall record the same in the proper trust deed book, and index the same in the name of each owner of any such lot so charged with such assessment, and such assessment so made shall constitute and be a lien upon said lots respectively, which shall have priority over all other liens, except those for taxes due the state, and shall be on a parity with other taxes and assessments due the city. Said amounts so assessed against the said several land owners shall be paid by the parties liable therefor to the said treasurer at all times, in the manner and with the attendant penalties for failure to pay promptly at the time prescribed in all respects as hereinbefore provided in the case of assessments for paving streets and alleys in a permanent manner, and the parties liable therefor shall, in the same manner, and to the same extent, have the right and be entitled to anticipate any or all of such installments thereon as in such case provided. The owners of, or the tenants, occupants or agents in control of any lot abutting on or near or adjacent to any street, avenue, alley, right of way or easement in said city, in which a public sewer is or may hereafter be laid and constructed, upon which lot any business or residence building is or may hereafter be erected, or upon which any water stands not connected with a public sewer, may be required and compelled to connect any such building or lot with such sewer. Notice to so connect may be given to the owner, lessee, or occupant of such building. Each day's failure to comply with such notice and connect with such sewer by such owner or owners, ten days after such notice is given, shall be a misdemeanor and a separate and new offense under this section, and every such offense shall be punishable by fine of not less than five nor more than twenty-five dollars. The expense incurred by any tenant, occupant, or agent in complying with the order of said council to make such sewer connection may be deducted out of the accruing rents as provided for in section forty-seven relating to the abatement of nuisances. Jurisdiction to hear, try, determine and sentence for violation of this section is vested in the municipal court of such city.

In the paving, curbing, macadamizing or otherwise improving streets and alleys and providing for the assessment of the cost thereof under section 61 or section 88 of the Charter of the City of Charleston there may be included in any such assessment the cost of constructing the necessary drains for the disposal of surface water. (Acts 1929 (Munl. ch.), ch. 4, § 62.)

For state law as to low cost improvements, see W. Va. Code, ch. 8, art. 17.

Sec. 62-a. Construction of sewer systems or common, lateral, branch, trunk or combined sewers.

The council is authorized and empowered to order and cause to be constructed, in said city, or part within and part outside of the limits of said city, public, common, lateral, branch, trunk and combined sewers or public sewer systems, or both, by contract or directly by the city, for the benfit of said city or any part thereof, and to purchase lands or easements therein or to condemn lands or easements therein in the manner provided by law, for such sewers or sewer systems, and when the council shall order and complete the construction of any such sewer or sewer system or any part thereof in said city, the owners of the property abutting on such sewer or abutting upon an avenue, street, alley, right of way or easement in which such sewer shall be constructed, or abutting on any avenue, street, alley, right of way, easement in which any common sewer, part of a sewer system, is constructed and laid, may be charged with all or any part of the cost thereof, including the cost of such sewer or sewer system at and across intersections at avenues, streets, roads and alleys adjacent thereto. If said work is let to contract, the provisions of the Charter of the City of Charleston relating to street paving contracts shall apply.

A sewer system shall be deemed to include all the common sewers, whether they be lateral, branch, trunk or combined sewers, which serve to drain a definite drainage area as specified in the order of the council directing the work to be done.

A common sewer shall be deemed to be a sewer in which all abutters have equal rights of entrance and use.

A lateral sewer shall be deemed to be a sewer which does not receive the sewage from any other common sewer.

A branch sewer shall be deemed to be a sewer into which the sewage from two or more lateral sewers is discharged, including storm and surface water sewers.

A trunk sewer shall be deemed to be a sewer into which the sewage from two or more branch sewers is discharged.

A combined sewer shall be deemed to be a sewer intended to receive domestic sewage and industrial wastes.

When said sewer or sewer system is completed the engineer of said city shall report to the council in writing the total cost of such sewer or sewer system, and a description of the lots and lands as to the location, frontage, depth and ownership liable for such sewer assessment, so far as the same may be ascertained, together with the amount chargeable against each lot and owner, calculated in the following manner: The total cost of constructing and

laying the sewer or sewer system, including the portions thereof laid in the intersections of streets and alleys, shall be borne by the owners of the land abutting upon the streets, avenues, alleys, rights of way or easements or portions thereof in which the sewer or some part of the sewer system, is constructed and laid; payment is to be made by each land owner on either side of such portion of a street, alley, right of way or easement in which a common sewer is laid, in the proportion that the frontage of his land upon such portion of said street, alley, right of way or easement in which such sewer or sewer system is laid bears to the total frontage of all lands so abutting on such street, alley, right of way or easement; in which the sewer or some part of the sewer system is laid; provided, that the charge laid against any owner of property shall not exceed three dollars per linear foot of frontage on each side of such street, alley, right of way or easement in which any such sewer or part of a sewer system is laid. In case of a corner lot, frontage is to be measured along the longest dimension thereof abutting on such street, alley, right of way or easement in which such sewer is laid, but if sewered on both sides then such a corner lot is to be charged only with the side first sewered. Any lot having a depth of two hundred feet or more and fronting on two streets, alleys, right of ways or easements, one in the front and one in the rear of said lot shall be assessed on both of said streets, alleys, right of ways or easements, if a sewer is constructed on both such streets, alleys, right of ways, or easements. When a corner lot has been assessed on either or both ends, it shall not be assessed on the side, and where it has been assessed on the side, it shall not be assessed on the end.

In the case of corner lots where the cost of sewering along one dimension is not assessed against the owner thereof, and in case of lots less than two hundred feet deep abutting at both ends on a street, alley, right of way or easement in which a sewer is laid, the cost of sewering along the dimension or end not assessed against the property owner shall in every case be borne by the City of Charleston.

Thereupon said council shall give like notice by publication as is required in case of street paving assessments, and the same rights shall exist as to the persons and property affected and the same duty as to corrections by said council as are prescribed with reference to paving. The report of the city engineer shall in like manner be examined by the council, and if found to be correct or corrected as aforesaid, and such estimated assessments to be a fair and equitable apportionment of the cost of such sewer or sewer system upon the basis hereinbefore described, it shall enter an order upon its records, setting forth such location, depth, ownership and said amount of such sewer assessments, against each respectively, calculated as aforesaid, and the entry of such order shall constitute and be an assessment for such proportion and amount so fixed therein against such respective owners and lots; and, if after such advertisement, notice and hearing, said council shall find that such apportionment at such rate is unjust or inequitable, and contrary to the intent of this act [this Charter], it shall ascertain, fix and assess the cost thereof among and upon the abutting owners respectively, justly and equitably and according

to the intent hereof, and in like manner assess and enter the amount so fixed respectively upon its records; and, the council shall, in either event, thereupon certify the same to the treasurer for collection and certify a copy of such order to the clerk of the county court of Kanawha County, who shall record the same in the proper trust deed book, and index the same in the name of each owner of any such lot so charged with such assessment, and such assessment so made shall constitute and be a lien upon said lots respectively, which shall have priority over all other liens, except those for taxes due the state, and shall be on a parity with other taxes and assessments due the city. Said amounts so assessed against the said several land owners shall be paid by the parties liable therefor to the said treasurer at all times, in the manner and with the attendant penalties for failure to pay promptly at the time prescribed in all respects as hereinbefore provided in the case of assessments for paving streets and alleys in a permanent manner, and the parties liable therefor shall, in the same manner, and to the same extent, have the right and be entitled to anticipate any or all of such installments thereon as in such case provided. The owners of, or the tenants, occupants or agents in control of any lot abutting on or near or adjacent to any street, avenue, alley, right of way or easement in said city, in which a public sewer is or may hereafter be laid and constructed, upon which lot any business or resident building is or may hereafter be erected, or upon which any water stands not connected with any public sewer, may be required and compelled to connect any such building or lot with such sewer. Notice to so connect may be given to the owner, lessee, or occupant of such building. Each day's failure to comply with such notice and connect with such sewer by such owner or owners, ten days after such notice is given, shall be a misdemeanor and a separate and new offense under this section, and every such offense shall be punishable by fine of not less than five nor more than twenty-five dollars. The expense incurred by any tenant, occupant, or agent in complying with the order of said council to make such sewer connection may be deducted out of the accruing rents as provided for in section 47 relating to the abatement of nuisances. (Acts 1929 (Munl. ch.), ch. 4, § 62-a.)

Sec. 63. Resolution declaring necessity for street improvement--Required; procedure for adoption.

Whenever it is deemed expedient by the council of said city to provide for the grading, paving, sewering, macadamizing or otherwise improving any street or alley therein to be paid for in whole or in part by special assessment said council shall declare by resolution, by aye and no vote, the necessity of such improvement. At the time of the passage of said resolution the said council shall have on file in the office of the city engineer, plans, specifications, estimates and profiles of the proposed improvements, showing the proposed grade of the street and improvement, after completion, with reference to the property abutting thereon, which plans, specifications, estimates and profiles shall be open for the inspection of all persons interested. Said resolution shall determine the general nature of the improvement, what shall be the grade

of the street, alley or other public place to be improved, as well as the grade or elevation of the curb, and said council shall approve the plans, specifications, estimates and profiles for the proposed improvement. The council shall also determine in said resolution the method of paying for the work contemplated in said plans and specifications whether by an appropriation from funds in the treasury unappropriated, or whether or not bonds shall be issued in anticipation of the collection of special assessments, to be made against the abutting property owners as provided for in section 61 of this act [this Charter]. Said resolution shall further show the approximate estimated cost of said proposed improvement per front foot of the property abutting thereon, and shall fix a date, at some regular or special meeting of the council, on which the owners of property to be assessed for such improvement may appear before council and protest against the same or be otherwise heard in reference thereto. Assessments shall be payable in ten installments as provided for in said section 61. The resolution herein provided for, declaring the necessity for said improvement, shall be published at least once a week for two successive weeks after its adoption, in a newspaper of general circulation published in the city, and an affidavit of the publisher showing publication for such time, together with a copy of said notice attached, shall be filed with the city clerk of the said city and spread upon the record of the minutes of the next meeting of the council. Said resolution shall be in effect from and after the first publication thereof as herein provided for. (Acts 1929 (Munl. ch.), ch. 4, § 63.)

Sec. 64. Same--Service on property owners of notice of passage.

A notice of the passage of the resolution required in the last preceding section, embodying a copy of said resolution, shall be served upon the owner of each piece of property to be assessed, said service to be made in the manner provided by this act [this Charter] for serving notices herein required or in other lawful manner; provided, that if any of the owners or persons be not residents of the City of Charleston, or if it appears by the return in any case, that the owner cannot be found, then a notice of the passage of said resolution shall be published in some newspaper of general circulation in said city once a week for two successive weeks, which notice shall be deemed completed on the day of the second publication thereof, and such notice whether by service or publication, shall be completed at least three days before the date fixed for hearing thereon, as aforesaid, and before the introduction of any ordinance providing for said improvement, as hereinafter provided for; and the return of the officer, or sworn return of any other person, serving such notice or a certified copy of said return, or when published, the certificate of the publisher of said newspaper, shall be prima facie evidence of the service of the notice as herein required. Notice upon infants may be served on their guardian, and upon insane persons by service upon their committee. It shall be the duty of the city manager to cause such notice to be served upon said property owners as aforesaid. (Acts 1929 (Munl. ch.), ch. 4, § 64.)

Sec. 65. City executive committees of political parties.

The city executive committees of the two political parties casting the highest vote at the last preceding general election, shall each consist of one person from each of the wards of the city to be selected in the same manner and at the same time that candidates for municipal offices are selected. Vacancies in a committee shall be filled and members to represent newly created wards shall be elected by the committee to serve until the next general city election. (Acts 1929 (Muni. ch.), ch. 4, § 65.)

For state law as to municipal executive committees, see W. Va. Code, § 8-5-14.

Sec. 66. Bonds to pay city's cost of improvement of streets, etc.

It shall be lawful for said City of Charleston to issue and sell its bonds as provided in this act [this Charter] for the sale of other bonds, to pay the city's part of the cost of said improvements as required by this act, and it may levy taxes in addition to all other taxes authorized by law, to pay such bonds and interest thereon, provided that the total indebtedness of the city for all purposes shall not exceed five per centum of the total value of all taxable property therein. (Acts 1929 (Muni. ch.), ch. 4, § 66.)

For state law as to municipal public works and revenue bond financing, see W. Va. Code, ch. 8, art. 16. As to public bonded indebtedness generally, see W. Va. Code, ch. 13.

Sec. 67. Hearing of property owners affected by improvements; ordinance concerning improvement.

After the expiration of not less than ten days from the time of the giving and publication of the notices as provided for in section 64, the council shall sit at the time and place fixed for the purpose of hearing all property owners to be affected, with reference to such proposed improvements, and shall hear and consider any protests or objections thereto; and the council shall thereupon, or as soon as may be, determine whether it will proceed with the proposed improvement or not, and if it decides to proceed therewith an ordinance for the purpose shall be passed. Said ordinance shall set forth the streets and alleys upon which the abutting property is to be assessed for the improvement, and shall contain a statement of the general nature of the improvement, and the character of the materials which may be bid upon therefor, of the mode of payments therefor; a reference to the resolution therefor passed for said improvement, giving the date of its passage and a statement of the intention of the council to proceed therewith in accordance with said resolution and in accordance with the plans, specifications, estimates and profiles provided for said improvement. In setting forth the lots and lands abutting upon the improvement it

shall be sufficient to describe them as the lots and lands abutting upon the improvement it shall be sufficient to describe them as the lots and lands [italics supplied by the editors, to indicate probably unintended repetition] bounding and abutting upon said improvements between and including the termini of said improvements, or by the description by which they are described on the land books of the County of Kanawha, and this rule of description shall apply in all proceedings in which lots or lands are to be charged with a special assessment. (Acts 1929 (Muni. ch.), ch. 4, § 67.)

For state law as to municipal public works and revenue bond financing, see W. Va. Code, ch. 8, art. 16. As to public bonded indebtedness generally, see W. Va. Code, ch. 13.

Sec. 68. Special assessments when several kinds of materials have been named in ordinance providing for improvement.

In any case in which special assessments have been made, or shall hereafter be made, upon property for the construction of any improvement authorized by this act [this Charter] or previous statutes and several kinds of materials have been named in the ordinance or ordinances providing for the same, and on which bids have been received for the construction of said improvements with any, either or all of said material, said assessments shall be valid and binding assessments on the property so assessed. In the case of the construction of sewers required under the provisions of this act [this Charter], notice of the passage of said resolution therefor, as provided for in section 64 of this act, shall be given in the manner provided for in said section of this act. (Acts 1929 (Muni. ch.), ch. 4, § 68.)

Sec. 69. Vote of council required for public improvement: petition by property owners.

No pavement, sewer or sewer system, or other public improvement the cost of all or a part of which is to be especially assessed against abutting property, or against the owners thereof, shall be made without the concurrence of two-thirds of all the members elected to council, unless the owners of a majority of the foot frontage of property to be so assessed, petition in writing therefor, in which event the said council shall have power upon the affirmative vote of a majority of all the members elected thereto to proceed with such improvement in the manner provided by law. (Acts 1929 (Muni. ch.), ch. 4, § 69.)

For state law as to low cost municipal improvements, see W. Va. Code, ch. 8, art. 17.

Sec. 70. Assessment when public improvement passes through or by public property or property of institution.

When the whole or any portion of the improvement authorized by this act [this Charter] passes through or by a public wharf, market space, park, ceme-

tery, structure for the fire department, water works, school building, infirmary, market house, work house, hospital, house of refuge, bridge, gas works, public prisons, court house, church or any other public structure or public grounds within said corporation, and belonging to said corporation, or to the county, state, or any church, association or eleemosynary institution, the council may authorize the proper proportion of the estimated cost and expense of the improvement to be certified to the clerk of the county court of Kanawha, and it shall be the duty of those persons having charge of the fiscal affairs of any such property or institution to make proper arrangements for the payment of such assessments when due and payable. (Acts 1929 (Munl. ch.), ch. 4, § 70.)

Sec. 71. What cost of improvement shall include.

The cost of any improvement contemplated in this act [this Charter] and for which assessments may be made, shall include the cost and expense of the preliminary and other surveys, and of printing and publishing all notices required to be published, and serving the notices upon the property owners and the cost of construction and inspection. (Acts 1929 (Munl. ch.), ch. 4, § 71.)

Sec. 72. Filing statement as prerequisite to action for damages arising out of improvement.

No person shall bring any action whatever in any court in this state for damages arising out of improvements or change of grade unless he shall have filed with the council at some time after the publication of the notice provided for in section 64, and before the time of the introduction of the ordinance providing for said improvement a statement of the damage which, in his opinion, he will sustain by reason of said improvement or the change of grade therefor, which statement shall be duly sworn to and be spread upon the minutes of said council. (Acts 1929 (Munl. ch.), ch. 4, § 72.)

For a case which, in construing identical language of a predecessor of the Charter section here codified, held that it is within the legislative power to require a notice and claim for damages to property caused by municipal action to be given and filed prior to bringing suit thereon, and that such legislative act is not a violation of the constitutional rights of the injured party, provided always that such requirement be not unreasonable, see Whit v. City of Charleston, 98 W. Va. 143, 126 S.E. 705 (1925).

Sec. 73. Liberal construction of proceedings with respect to improvements.

Proceedings with respect to improvements shall be liberally construed by the courts to secure a speedy completion of the work at reasonable cost, and

a speedy collection of the assessments after the time has elapsed for their payments and merely formal objection in such cases shall be disregarded. (Acts 1929 (Muni. ch.), ch. 4, § 73.)

Sec. 74. Election and three-fifths vote required for issuance of bonds; regulations governing.

It is especially provided that no bonds shall be issued under the provisions of this act [this Charter] unless and until the question of issuing said bonds shall have first been submitted to a vote of the people of the city and shall have received three-fifths of all votes cast at said election for or against the same.

The council may provide by ordinance for an election every year, at which the question shall be submitted to the people, as to whether the city shall be authorized to issue bonds for the purpose and under the provisions of this act, to an amount not to exceed in the ensuing year the amount recommended by said ordinance for said ensuing year; but the ordinance providing for said election need not specify in detail the location of the improvements contemplated to be paid for during the ensuing year out of said aggregate issue authorized for said year, but before issuing any bonds the council shall pass separate ordinances for such street or alley to be improved, dealing with all the requirements set forth in section 67 of this act [this Charter], and notwithstanding the provisions of sections 2, 3 and 6 of chapter 47 of the Code,* it shall be sufficient description for the purpose for which said election is held if the ordinance providing for said election shall recite that it authorized the council of said city to issue bonds for the purpose of grading, paving, sewering or otherwise improving the streets and alleys of said city, at such time as to the council shall seem fit during the ensuing year ending on the.....day of .....19....., to an amount not exceeding in the aggregate during the said year the sum of.....; and when the council shall have been once authorized by a vote of the people to issue bonds for the purpose and in a sum not to exceed the amount set forth in the ordinance providing for the said election, no further election shall be necessary for the issuing of bonds during said ensuing year up to the amount stipulated in said ordinance providing for said election, but the council shall from time to time during said ensuing year, by ordinance authorize the issue of said bonds, in such sums and for the improvement of such streets or alleys as to it may seem best, providing the requirements of this act are complied with. The aggregate amount of bonds authorized by said annual election shall not be exceeded during said ensuing year, unless and except the same be authorized by special election held at a subsequent time in said year and duly called as provided for the calling of the annual bond election.

*Editor's note.--Secs. 2, 3 and 6 of ch. 47 of "the Code," here mentioned, apparently are §§ 2, 3 and 6 of ch. 47A of the W. Va. Code, Annotated, 1906. For present state law as to financing of municipal public works by revenue bonds, see

W. Va. Code, §§ 8-16-9 through 8-16-17, and, see also, W. Va. Code, ch. 13, relating to public bond issues and indebtedness generally.

The provisions of chapter 47 of the Code [see editor's note, supra] concerning bond elections shall, so far as they are not in conflict with the provisions of this act [this Charter], apply to the annual bond elections and special bond elections herein provided for. (Acts 1929 (Muni. ch.), ch. 4, § 74.)

Sec. 75. Authority of council to lay special levies in years 1929 and 1930 for special purposes.

Editor's note.--The text of this section, being Acts 1929 (Muni. ch.), ch. 4, § 75, is omitted as executed and obsolete. It authorized special levies in the years 1929 and 1930 for the purposes of (1) construction of trunk and branch line sewers; (2) the acquisition of a ramp at the C. & O. Ry. passenger station on the south side of the Kanawha River; and (3) maintenance and care of a municipal cemetery within the city.

Sec. 76. Power of council as to public buildings, hospitals, libraries, etc.

The council shall have the authority to erect, buy, sell and lease all buildings necessary for the use of the city government and to provide for and regulate the same, and to establish and maintain public hospitals, libraries and reading rooms, and to purchase books, papers and manuscripts therefor, and to receive donations, gifts or bequests for same in trust or otherwise. (Acts 1929 (Muni. ch.), ch. 4, § 76.)

Secs. 77, 78 and 79. Fire department civil service.

Editor's note.--The text of these sections, being Acts 1929 (Muni. ch.), ch. 4, §§ 77, 78 and 79, is omitted as obsolete, having been superseded by the provisions of West Virginia Code, chapter 8, article 15, part IV (§ 8-15-11 et seq.), captioned "Civil Service for Paid Fire Departments."

Sec. 80. Political activities by members of fire or police departments.

No member of the fire department or police department shall actively engage in any primary election, convention or election in which any officer in the city, county or state is to be nominated or elected, nor shall such member, directly or indirectly, give or offer to give, contribute or offer to contribute any money or thing of value or profit to any political committee or party orga-

nization to be expended in behalf of any political party, nor to any candidate or candidates for nomination for or election to any office in the city, county or state. The violation of any of the provisions of this section by any member of the fire department or police department shall be deemed misconduct in office. Any member of the fire department or police department guilty of misconduct, shall be dismissed from the service of the city by the head of his department or by council, upon charges preferred and proven by any citizen of said city. (Acts 1929 (Muni. ch.), ch. 4, § 80.)

For state law as to political activity of members of paid fire department, see W. Va. Code, § 8-15-24. As to political activity of members of paid police departments in class I cities, see W. Va. Code, § 8-14-19.

Sec. 81. Service of notice, summons, warrant, etc.

When any notice is required to be given, or any summons, warrant or other process is required to be served or otherwise executed, under the provisions of this act [this Charter], it shall be sufficient if such notice, summons, warrant, or other process be executed by an officer of the police department or other employee of said city in the same way or manner in which the laws of the state prescribe for executing summonses and subpoenas by state officers, unless otherwise provided by this act [this Charter]. (Acts 1929 (Muni. ch.), ch. 4, § 81.)

Sec. 82. Contested elections for council.

Whenever one or more members of the council shall be a candidate for re-election, it shall be the duty of the council to meet and appoint some person or persons, qualified to act in hearing contested election matters and cases. The place and stead of such disqualified member or members shall be filled in each case by a member or members of the same political party as the person or persons respectively, in whose place or places he or they are so appointed. Every person so appointed shall take an oath of office to faithfully and impartially perform the duties of said office. In all matters concerning such contests, such person or persons so appointed shall act in the place and stead of such member or members, so being candidates, and it shall be unlawful for any member of the council to act as such in hearing any contest in relation thereto, when such member is a candidate at such election; and anyone violating this section shall be deemed ineligible to the office for which he is a candidate. (Acts 1929 (Muni. ch.), ch. 4, § 82.)

Editor's note.--There is no prior reference in the Charter to any "such disqualified member or members" as mentioned in this section. See, however, Char., § 23, which provides, in pertinent part, that "all contested elections shall be

heard and determined by the council," and a logical assumption may be that, in enacting this section, the legislature intended that incumbent council members whose reelection is contested shall be disqualified to hear and participate in the determination of any such contest, and to provide for qualified persons, not members of the council, to act in the place and stead of those members whose election is contested.

Sec. 83. Duties of city clerk as to municipal elections.

The city clerk, acting under the state laws insofar as they are not in conflict with this act [this Charter], shall perform such duties relating to all municipal elections held under the municipal authorities of said city as the clerks of the county and circuit courts of Kanawha County perform under state laws in relation to state, county and district elections in said county; and he shall likewise be the custodian of all ballots, tally sheets, etc., pertaining to all municipal elections. (Acts 1929 (Munl. ch.), ch. 4, § 83.)

Sec. 84. Valid ordinances and regulations passed on or before May 1, 1915, not inconsistent with this Charter, to remain in effect until repealed.

All valid ordinances and regulations passed and adopted by the council, or by the board of affairs and council on or before the first day of May, 1915, and not inconsistent with this act [this Charter], shall be and remain in force unless and until repealed, and the council now [March 6, 1929] in office shall continue to exercise its powers as such until the officers elected in 1931 shall have been qualified. (Acts 1929 (Munl. ch.), ch. 4, § 84.)

Editor's note.--The "board of affairs" herein referred to was the governing body of the city under a Charter enacted in 1907, which was superseded by a new Charter enacted in 1915 providing for a mayor council form of government.

Sec. 85. Powers and duties of policemen.

The mayor shall appoint such number of policemen as are or may be hereafter prescribed by the city council by ordinance, and the mayor shall have at his discretion, the absolute right and power to dismiss any policeman and appoint another in his stead. The policemen shall be under command of the mayor and the chief of police, to be appointed as in this act [this Charter] provided for, and shall perform any and all duties incident to the office of policeman under the instructions and command of the mayor and the chief of police,

and, in addition to the usual and customary duties prescribed by the laws of this state and under the provisions of this Charter required of them, it shall specially be the duty of each police officer to report to the chief of police, or some one designated by said chief of police to receive such report, daily and oftener if occasion demands, the condition of all streets, sidewalks, alleys, basements, backyards, buildings, unimproved lots and all other things and matters within the limits of said city that may come under the notice of such policemen which may relate to the health of the citizens thereof, the sanitary conditions, the necessity of the removal of any obstructions upon any of the streets, alleys or sidewalks, and it shall be the duty of the policemen under their instructions to perform all the duties and exercise all the powers ordinarily imposed upon or given to the officers now known as health officers. It shall also be the duty of each police officer to perform all the duties of humane officer and to exercise all the functions, power and authority relating thereto which are or may be prescribed by any law of this state or ordinance of the city. A police officer in making arrests shall have all of the power and authority of a constable under the laws of the State of West Virginia. (Acts 1929 (Muni. ch.), ch. 4, § 85.)

Editor's note.--The appointment, promotion and dismissal of police officers in paid police departments of class I cities is now governed by the civil service provisions of W. Va. Code, § 8-14-7 et seq.

Sec. 86. Compensation of members of council; absence from meetings.

$115.00

Roll Call

Each member of the city council shall be paid during his term of office the sum of ~~two dollars and fifty cents~~ for each meeting of the council that he shall attend; provided, that the aggregate amount to be paid to each member of the council shall not exceed the sum of ~~one hundred dollars per annum~~. The roll of the members of the council shall be called at the beginning and at the end of each meeting thereof, and those members only who answer in person at each roll call shall be entitled to receive their pay for such meeting. The names of those members present at each roll call shall be entered upon the record. If there should not be a quorum present at the first roll call and the meeting be adjourned for that reason, then it shall not be a meeting that will entitle those present to the payment of the sum of two dollars and fifty cents as provided in this section. It shall be the duty of all councilmen to attend all of its meetings, and if any councilman shall be absent from the meetings of council as shown by its records for three consecutive meetings, then his office shall ipso facto become vacant, unless the council shall authorize or excuse such absence. If the office of any councilman shall become vacant under

the provisions of this section, then the council shall proceed to fill the same as it is authorized to do in the case of vacancies. (Acts 1929 (Muni. ch.), ch. 4, § 86.)

For state law providing that, "notwithstanding any charter provision to the contrary," the governing body of every municipality shall by ordinance fix the compensation of every municipal officer and employee; provided, that the salary of an officer shall not be increased or diminished during his term of office, see W. Va. Code, § 8-5-12.

Sec. 87. Reports by manager to council; reports by officers and employees under supervision of manager.

It shall be the duty of the manager, not later than the tenth day of any month after his appointment, to make a detailed report to the council for the preceding month. Such report shall show under distinct heads, first, the names and salaries of all employees under the control and supervision of manager; second, all expenditures or disbursements in the several departments under the supervision of the manager; third, an itemized statement of all purchases, together with the cost thereof, for each and every such department; fourth, all such other matters and things as the council may by proper ordinance or resolution require of said manager. Such report shall be entered of record in the minutes of the council and be a public record, open to the inspection of all persons. All officers or employees in any of the departments under the supervision of the manager shall, whenever required by said manager, make full and complete reports of all things done by them as such officers or employees in connection with the business of the city. (Acts 1929 (Muni. ch.), ch. 4, § 87.)

Sec. 88. Additional method for paving streets; assessment certificates.

In addition to the method provided for paving streets, by section 61 of the Charter of the City of Charleston, the council may order any street, avenue, public alley, or portion thereof, to be graded and paved, re-paved, or otherwise permanently improved, and the council may order the mayor and city clerk to issue a certificate for each installment of the amount of the assessment to be paid by the owner of any lot or fractional part thereof fronting on such street, avenue, or alley. The amount specified in said assessment certificate shall be a lien as aforesaid [in Char., § 61] in the hands of the holder thereof upon the lot or part of a lot fronting on such street, avenue, or alley, and such certificate shall draw interest from the date of said assessment and the payment may be enforced in the name of the holder of said certificate by proper suit in equity in any court having proper jurisdiction to enforce such lien; the council shall fix the amount of such assessment, advertise for bids and do all other things in connection therewith as is provided for paving or permanently im-

proving any street or alley or any portion thereof in section 61, except that such assessment laid under this section shall include the whole cost of such improvement, including the cost of grading and paving squares at intersections of streets and curbing, the costs of which intersections shall be apportioned against the several properties fronting upon the street or portion thereof so improved; and such certificates shall be issued in the same number of installments and payable at the same time as other paving or permanent improvements are provided to be paid for, and shall be a lien in the hands of the holder thereof upon the particular lot against which they are assessed in the same way and manner that assessments are liens under section 61 of said Charter. And nothing contained in this act [this Charter], or in the Charter of the City of Charleston, shall be construed as imposing a time limit upon the enforcement by appropriate suit of any lien for public improvements, heretofore or hereafter created.

Certificates authorized by this section may be issued, sold or negotiated to the contractor doing the work, or to any other person if the council deem it expedient; provided, [that] the city in issuing such certificates shall not be held as guarantor or in any way liable for payment thereof.

Certificates so issued shall contain a provision to the effect that in the event of default in the payment of any one of said certificates, when due, and said default continuing for a period of sixty days, then all unpaid certificates shall become due and payable and the holder of said certificates may proceed to collect all of such unpaid certificates in the manner hereinbefore provided. Certificates issued in pursuance of this section shall be negotiable at any bank in the City of Charleston.

The owner of the land or lot of land assessed under this section may at any time anticipate and pay such assessment or certificate with accrued interest thereon.

Provided, that no street, avenue or alley shall be paved or otherwise permanently improved pursuant to this section except and unless two-thirds of all the members elected to the council shall concur in the passage of the ordinance providing therefor, and the vote thereon shall be taken by ayes and noes, and duly entered upon the record. (Acts 1929 (Muni. ch.), ch. 4, § 88.)

For a case holding that the provisions of this section that an assessment under the certificate plan "shall include the whole cost of such improvement" precluded the city from paying to the paving contractor from general revenues or from monies derived from bonds, since if this were done "the whole cost of such improvement" would not be included in the assessment made under the certificate plan, see United States v. City of Charleston, 93 F. Supp. 748 (1950). This Charter section was construed therein as in pari materia with Char., §§ 61 and 88-b.

Sec. 88-a. Void, irregular or omitted assessments.

In the case of the construction of any pavement, sewer, sidewalk or other permanent improvement under the provisions of this Charter where an assessment has heretofore been laid, or may hereafter be laid for the cost thereof, which said assessment is or shall be void or voidable by reason of errors, irregularities or defects in the proceedings under which such improvement was made, or in case such assessment shall have been made against the wrong person or shall have been omitted to be made in a case where the same was proper, it shall be the duty of the council within two years after the completion of such permanent improvement, or after any court shall have declared such assessment invalid, to cause notice to be given to any person against whom the cost of said improvement might properly be or have been assessed under said Charter, of its intention to lay such assessment against him and fixing a time and place at which he may appear and show cause against the same. Said notice shall be served as provided in the said Charter for the giving of notices in assessment proceedings, or in any other manner provided by law, including by publication where the person is a non-resident of the city or cannot be found. At the time and place fixed for hearing under the notice aforesaid, or at any time thereafter, the council shall proceed to lay and levy an assessment for the cost of such permanent improvement in such manner as would have been lawful under proper proceedings at the time said improvement was made, unless the person so notified shall show good cause against the same, and no further notice of such assessment shall be necessary. The assessment so laid shall be a lien upon the property liable therefor and may be recorded and enforced in the same manner as provided for other liens for permanent improvements. This section shall apply to assessments made and certificates issued under section 88 of this Charter, as well as to other assessments and liens for public improvements. (Acts 1929 (Muni. ch.), ch. 4, § 88-a.)

Sec. 88-b. Assessment certificates to pay for cost of construction of sewers and sewer systems.

In addition to the method for the payment of the cost of construction of sewers and sewer systems provided by sections 62 and 62-a of the Charter of the City of Charleston, the council may order any sewer or sewer system constructed and laid, in any block, street, avenue, alley or in any right of way or easement, or portion thereof, and the council may order the mayor and city clerk to issue a certificate for each installment of the amount of the assessment to be paid by the owner of any lot or fractional part thereof fronting on such street, avenue, alley, right of way or easement in which such sewer system is constructed and laid, and the amount specified in said assessment certificate shall be a lien as aforesaid in the hands of the holder thereof upon the lot or part of lot fronting on such street, avenue or alley, right of way or easement, and such certificate shall draw interest from the date of said assessment and the payment may be enforced in the name of the holder of said certificate by proper suit in equity in any court having proper jurisdiction to enforce such lien; the council shall fix the amount of such assessment, advertise for bids

and do all other things in connection therewith as is provided in section 61 of said Charter for paving or permanently improving any street or alley or any portion thereof, the costs of which shall be apportioned against the several properties fronting upon the street, avenue, alley, right of way or easement or portion thereof in which the sewer or sewer system is laid according to the provisions of section 62 or section 62-a, as the case may be. Such certificates shall be issued in the following number of installments.

Where the assessment shall not exceed fifty dollars, the assessment and certificate issued thereon shall be in one amount, due and payable in ninety days from the completion and acceptance of the work; if over fifty dollars and not more than one hundred dollars, then such amount shall be covered by only two certificates of equal amounts, payable in ninety days and one year, respectively; if over one hundred dollars and not more than one hundred and fifty dollars, then such amount shall be covered by only three certificates of equal amounts payable in ninety days, one year and two years, respectively; if over one hundred and fifty dollars and not more than two hundred dollars, then such amount shall be covered by only four certificates of equal amounts, payable in ninety days, one year, two years and three years, respectively; and if more than two hundred dollars, then in five certificates of equal amounts, payable in ninety days, one year, two years, three years and four years, respectively; and the term "equal amounts" herein shall mean as nearly equal as practicable, that is, four certificates being expressed in terms of blank dollars each, and, when practical, in multiples of five, the cents and odd amounts being covered by the first certificate.

Every such certificate shall be a lien in the hands of the holder thereof upon the particular lot against which it is assessed in the same way and manner that assessments are liens under sections 62 and 62-a of this act [this Charter]. And nothing in this act, or in the Charter of the City of Charleston shall be construed as imposing a time limit upon the enforcement by appropriate suit of any lien for public improvements heretofore or hereafter created.

Certificates authorized by this section may be issued, sold or negotiated to the contractor doing the work, or to any other person if the council deem it expedient; and shall be negotiable at any bank in the City of Charleston; provided, [that] the city in issuing such certificates shall not be held as guarantor or in any way liable for the payment thereof. Certificates so issued shall contain a provision to the effect that in the event of default in the payment of any one of said certificates when due, said default continuing for a period of sixty days, unpaid certificates shall become due and payable and the holder of said certificates may proceed to collect all of such unpaid certificates in the manner hereinbefore provided.

Provided, that no sewer or sewer system shall be constructed or laid pursuant to this section except and unless two-thirds of the members elected to the council shall concur in the passage of the ordinance providing therefor,

and the vote thereon shall be taken by ayes and noes, and duly entered upon the record. (Acts 1929 (Muni. ch.), ch. 4, § 88-b.)

For a case holding that an assessment levied pursuant to this section against the United States for paving a portion of Summers Street which abutted upon federally owned property was void in the absence of an act of congress allowing lands of the United States to be subjected to special assessments for local improvements, and that both the lien filed by the city against the federal building and the certificate issued to the paving contractor were also void, see United States v. City of Charleston, 93 F. Supp. 748 (1950). This Charter section was construed therein as in pari materia with Char., §§ 61 and 88.

Sec. 88-c. Subdividing abutting land for purpose of making assessments.

If the abutting land on any avenue, street, road or alley sought to be graded, paved, repaved or otherwise improved, or on any avenue, street, road, alley, right of way or easement in which a sewer or sewer system is ordered laid, under any of the provisions of the Charter of the City of Charleston, is not subdivided or laid off in lots by a map or deed of record, the council may, for the purpose of making the assessments provided for in this section and other sections herein, subdivide said land into lots of such size as the council deems advisable for the purpose of laying the proper assessment against such land. (Acts 1929 (Muni. ch.), ch. 4, § 88-c.)

Sec. 89. Initiation of ordinances by voters.

Any proposed ordinance, or amendment to any ordinance already in effect, may be submitted to the city council by the petition of qualified voters in said city, but such petition must be signed by such number of voters as shall amount to at least ten per cent of the number of votes cast for the office of mayor at the last preceding municipal election. Such proposed ordinance, or amendment to an ordinance, shall be passed without alteration or change by the city council within thirty days after such petition is filed, or the city council shall, in lieu of passing such ordinance or amendment to an ordinance, submit such proposed ordinance, or amendment to an ordinance, in the manner hereinafter prescribed for ratification or rejection to the qualified voters of the city at the next regular municipal election which is to be held not less than sixty days after such petition is filed. If such petition contains a request for a special election and is signed by sufficient qualified voters to equal in number at least fifteen per cent of the votes so cast for the office of mayor at the last preceding regular municipal election, the ordinance or amendment thereby proposed shall be passed by

the city council without amendment or change, within thirty days after such petition is filed, or the city council shall submit such proposed ordinance or amendment for ratification or rejection to the qualified votes at a special election which shall be called within thirty days and held not less than sixty nor more than ninety days after such petition is filed, unless a general or special election is fixed by law to be held within said period of time. In the latter event, said proposed ordinance or amendment shall be submitted for ratification or rejection at such election. The city council shall cause such proposed ordinance or amendment to be printed and published in some newspaper of general circulation in the city once each week from the time the council decides to submit the same to the voters until such election is held. No ordinance or amendment to an ordinance adopted by the voters at any such election shall be repealed or amended by the city council.

The ballot used for any such election shall have printed on it the title of each ordinance, or amendment to an ordinance, submitted for ratification or rejection and on separate lines under said title the words "for said ordinance" and "against said ordinance" (or the amended part thereof, as the case may be). If a majority of the qualified voters of the city voting on any proposed ordinance, shall vote in favor thereof, the same shall thereupon become a valid ordinance and be in full force and effect at the expiration of the period of ten days from and after said election. If two or more ordinances, or amendments to ordinances, adopted at the same election are inconsistent, then the respective ordinance, or amendment to an ordinance, receiving the largest affirmative vote at such election shall prevail, and the form of submission of inconsistent ordinances, or parts thereof, or amendments to ordinances, shall be in such form that the voters may clearly express their choice. (Acts 1929 (Munl. ch.), ch. 4, § 89.)

Sec. 90. Reconsideration of ordinance protested by petition; submission of ordinances to voters.

Petition 15% of votes cast

If within the period of five days after the passage of any ordinance a petition signed by sufficient qualified voters of said city, being in number at least fifteen per cent of the votes cast for all the candidates for the office of mayor at the last preceding regular municipal election, shall be filed protesting against such ordinance, or any part thereof, taking effect, such ordinance, or such part thereof so protested against, shall thereupon and thereby be suspended from taking effect, and the city council shall immediately again consider the same, and if it be not repealed or so amended as to meet the requirements of the said protest, the city council shall submit the same for ratification or rejection to the qualified voters of the city at the next regular municipal election which shall be held not more than thirty days after such petition is filed, or at a special election to be called thereafter by the city council for that purpose to be held in not less than sixty days nor more than ninety days after such petition is filed, and such ordinance, or part thereof so protested, shall not take effect unless a majority of the votes cast at such election thereon shall be

for the ratification thereof. If such petition shall only be signed by sufficient qualified voters to equal in number at least five per cent but not sufficient to equal in number at least fifteen per cent of the votes cast for the candidate for said office of mayor at the last preceding municipal election, the city council shall submit such ordinance, or such part thereof so protested, for ratification or rejection at the next ensuing regular municipal election which is to be held more than thirty days after such petition is filed. The city council may, on its own motion, without any petition being required therefor, submit at a regular or special municipal election any ordinance passed by it in the same manner and with the same force and effect as hereinbefore provided. No ordinance, or part of an ordinance, rejected at any election shall be enacted or passed by the city council within the period of twelve months thereafter. (Acts 1929 (Muni. ch.), ch. 4, § 90.)

For a case holding that a referendum held pursuant to this section of the city Charter cannot affect the validity of an ordinance when questioned for other reasons, see State v. City of Charleston, 130 W. Va. 490, 45 S.E.2d 7 (1967).

Sec. 91. Recall of officers.

Any officer of the City of Charleston elected by the voters under the provisions of this act [this Charter], may be recalled and the office declared vacant as provided in this act. Such officer may be removed from office by a recall election held thereunder, but no such officer shall be removed from office within the period of four months after he enters upon the discharge of his duties as such. Before any such recall election shall be held a petition, stating the name or names and the office or the officer or officers sought to be recalled, and signed by sufficient qualified voters of the said city as shall equal in number the quantity of twenty-five per cent of the votes in the whole city or in the ward, as the case may be, for all the candidates for the office of mayor at the last preceding regular municipal election, and containing a sworn statement of the grounds upon which it is sought to remove the said officer or officers, shall be filed with the city clerk. No such petition shall be filed within the period of six months before the end of the term of such officer. The city council shall immediately, upon the filing of said petition, call a special election in the manner in this act [this Charter] provided for calling special elections and submit to the voters the question of recalling such officer or officers. The ballot at such election, with respect to each person whose recall is sought, shall be substantially as follows: "Shall (name of person) be removed from the office (name of office) by recall?" Immediately following such question there shall be on the printed ballot the two propositions in the order set forth:

"For the recall of (name of person)."

"Against the recall of (name of person)."

Immediately to the left of said proposition shall be printed a square in which the voters, by marking a cross mark (X), or in some other way declaring their intention, may vote for either of such propositions. If sixty per cent of the voters registered voting on said propositions vote in favor of the recall of such officer or officers, then he or they shall thereby be forthwith removed from such office and such vacancy or vacancies shall be filled as provided in this act: provided, however, that within fifteen days after the returns of such recall election shall have been canvassed by the city council, a petition signed by sufficient qualfied voters to equal in number at least thirty per cent of the votes cast in the city, or ward, as the case may be, for the candidates for the office of mayor at the last preceding regular municipal election, and praying that such vacancy or vacancies be filled by a special election to be held not less than thirty days nor more than forty-five days thereafter, the city council shall order a special election to be held in the same manner as other special elections are provided for in this act for the purpose of filling such vacancy or vacancies. (Acts 1929 (Muni. ch.), ch. 4, § 91.)

Sec. 92. Signatures and affidavits to petitions filed under three preceding sections; form of submission of ordinance; all city elections to conform to state law.

The signatures to petitions filed under the provisions of the last three sections need not be all on one paper or one sheet of paper, but separate petitions may be circulated and signed and the aggregate number of names on all of such petitions, if equal to the number required in this act, shall be sufficient. The circulator of each paper shall make and append thereto an affidavit that each signature thereon is the signature of the person whose name it purports to be. The residence address of each signer shall accompany the signature. All such petitions shall be filed with the city clerk and shall be deemed and held to be sufficient if they appear to be signed by the requisite number of signers and such signers shall be deemed and held to be qualified voters, unless a protest in writing, under oath, shall be filed with the city clerk by some qualified voter within fifteen days after such petitions are filed, which protest shall set forth the name of each signer protested against and the ground therefor. It shall be the duty of the city clerk as soon as possible and within twenty-four hours after the filing of such protest to mail a notice to each signer so protested against at his address as given in the petition, requiring him to be and appear before the city registrars at a time fixed in said notice, not less than twenty-four hours nor more than forty-eight hours after the mailing of such notice, for the purpose of defending his right to sign said petition. If it shall be proven by satisfactory evidence that such person is not a qualified signer of such petition, then his name shall be stricken therefrom. All evidence taken shall be under oath, and any signer present at the hearing may be called as a witness by the protestant or testify in his own behalf. All hearings shall be summary and shall be concluded within fifteen days after such petition is filed. The city registrars [see Char., § 9] shall forthwith certify the result of their examination to the city clerk and such city clerk shall serve a copy of such certificate upon the person or persons named in the petition as represent-

ing the signers thereof. When the petition contains a sufficient number of qualified signatures the city registrars shall forthwith file the same with the city clerk, and he shall transmit the same to the city council, which shall call an election as provided for in the three preceding sections of this act [this Charter] All petitions filed in the city clerk's office shall be public records. When any petition contains a form of submission of the ordinance petitioned for and such form is a reasonably fair description thereof, the same shall be placed on the ballot and no petition filed subsequently shall be permitted to use any form of submission that is so similar to the one previously filed as to tend to confuse the voter, and, in case of such conflict, the person presenting the subsequent petition may file a form of submission which shall be placed upon the ballot, provided, the same shall fairly describe the ordinance, or amendment to an ordinance, petitioned for and shall not be in conflict with any prior forms of submission or tend to confuse the voter.

The city council shall so frame all forms of submission that the voter can, by making a cross in a square in front of some appropriate words, vote either for the ratification or the rejection of the proposed measure, but no ballot shall be rejected from which the reasonable intention of the voter however he shall have marked the same, can be ascertained. All city elections, regular or special, shall conform as nearly as possible to the election statutes contained in chapter 3 of the Code of West Virginia. (Acts 1929 (Muni. ch.), ch. 4, § 92.)

Sec. 93. Additional method for construction of sidewalks: assessment certificates.

In addition to the method of securing the laying of sidewalks set out in section 49 of this chapter [this Charter], the council of said city may cause any sidewalk to be constructed, laid, relaid, or otherwise permanently improved in the City of Charleston in the following manner and upon the following terms: Plans and specifications shall be prepared and filed, resolutions and ordinances shall be adopted and notices shall be prepared and served in the same way and manner as near as may be, as in the case of the paving and improvement of streets and alleys. The contract for same shall, after due advertisement in which council shall reserve the right to reject any and all bids, be let to the lowest responsible bidder and upon completion and acceptance of the work, council shall order the mayor and city clerk to issue to the contractor doing the work a certificate for the amount of the assessment to be paid by the owner of any lot or fractional part thereof fronting on such sidewalk, and the amount specified in said assessment certificate shall be a lien in the hands of the holder thereof upon the lot or part of a lot fronting on such sidewalk as well as a debt against the owner of said lot, and such certificate shall draw interest from the date of said assessment, and the payment may be enforced in the name of the holder of such certificate by a proper suit in equity in any court having proper jurisdiction to enforce such liens, and council shall fix the amount of such assessments and do all things in connection therewith necessary to make them valid and do all other things in connection therewith as is provided for paving or

improving streets and alleys and such certificates shall be issued one for each abutting lot or portion thereof payable six months from the date of the completion and acceptance of the work and shall be a lien in the hands of the holder thereof upon the particular lot against which they are assessed in the same way and manner that assessments for street paving are liens under the other provisions of the aforesaid act creating and amending the Charter of the City of Charleston; providing, however, that council shall not order any but concrete sidewalks; and, provided, further, that council shall not advertise for bids for any one letting of less than five thousand square feet; and, further, provided, that council shall not receive any bids or let any sidewalk contract between the first day of October and the first day of March of any year. Nothing in this section shall be so construed as to prevent any abutting lot owner from having his own sidewalk put in if done before the advertising hereinbefore mentioned and provided same is done according to the lines, grades and specifications of the city engineer, for which no charge shall be made. The total cost of constructing, laying, relaying, or otherwise permanently improving any sidewalk or walks shall be borne by the owners of the land abutting upon said sidewalk or sidewalks according to the following plan, that is to say, payment is to be made according to the proportion of square feet in front of any lot or portion thereof bears to the whole letting. The contract for sidewalks referred to in this section does not necessarily have to be one continuous sidewalk, but the five thousand square feet required for a letting as aforesaid may be made up of or composed of any number of sidewalks in any parts of the city. (Acts 1929 (Muni. ch.), ch. 4, § 93.)

Sec. 93-a. Transcript of property to be furnished by county assessor.

The county assessor shall furnish transcript of real and personal property on or about the tenth day of September of each year and his fee for same shall be not less than four hundred nor more than one thousand dollars for such work. (Acts 1929 (Muni. ch.), ch. 4, § 93-a.)

Editor's note.--See W. Va. Code, § 11-3-6, which provides that county assessors furnish to the clerk of every municipality in their respective counties a certified statement of the aggregate value of real and personal property not later than March 7th of each year.

Sec. 94. Authority to issue warrants; vacancy in office of municipal judge.

The municipal judge, mayor, city clerk, municipal court clerk, chief of police, or in the absence of the chief of police, the captains of police and lieutenants of police shall each have authority to issue warrants for all offenses committed within the police jurisdiction of the City of Charleston. Any vacancy in the office of municipal judge shall be filled by appointment by the mayor until the next election. (Acts 1929 (Muni. ch.), ch. 4, § 94.)

Sec. 95. Statement of claim before action against city for damages for personal injury.

No action shall be maintained against the City of Charleston for damages for a personal injury alleged to have been sustained by reason of the negligence of the city or of any officer, agent or employee thereof, unless a written verified statement of the nature of the claim and of the time and place at which such injury is alleged to have been received shall have been filed with the city clerk within thirty days after the cause of action shall have accrued. The cause of action shall be deemed to have accrued at the date of the sustaining of the injury, except that where death results therefrom the time for the personal representative to give notice shall run from the date of death. An action at law for damages for personal injuries or death shall not be commenced until the expiration of thirty days after the filing of the notice as provided in this section. (Acts 1929 (Muni. ch.), ch. 4, § 95.)

For a case holding that this section imposes a condition precedent to the right of the claimant to sue the city, and in the absence of allegation and proof that its provisions have been complied with, the omission may be taken advantage of after the verdict, see Thompson v. Charleston, 118 W. Va. 391, 191 S.E. 547 (1937).

Sec. 96. Health commissioner.

The health commissioner shall be a physician of good standing in his profession and may devote his time to city work alone. It shall be his duty to administer to all charity cases that he may, in his discretion, deem deserving. He shall, in conjunction with the city manager, have charge of the general health and sanitation of the city and it shall be his duty to carefully investigate all complaints and make a careful detailed report of all his official acts as health commissioner to the city manager and council at least once every month. He shall be appointed in the way and manner provided in the Charter of the City of Charleston and shall receive such salary as council may by ordinance prescribe. Nothing herein, however, shall be construed as in any way affecting the police officers of the city relative to their powers and duties in regard to city sanitation contained and set forth elsewhere [see Char., § 85] in said Charter. (Acts 1929 (Muni. ch.), ch. 4, § 96.)

Editor's note.--In lieu of a city health commissioner and health department, the Kanawha-Charleston combined board of health now exercises their functions within the city, pursuant to an agreement between the city and the county court dated Oct. 18, 1956, a copy of which is on file in the office of the city clerk.

For state law as to combined city-county boards

of health, see W. Va. Code, § 16-2-3. As to local health officers generally, see W. Va. Code, §§ 16-2-1 through 16-2-5.

None

Sec. 97. Police matron.

It shall be the duty of the mayor to appoint a reputable woman who shall be known as police matron, and such police matron shall have all the qualifications and be subject to all the provisions of chapter 18 of the Acts of the Legislature of 1911 [now codified in W. Va. Code, § 8-14-4]. The council of the City of Charleston shall provide a reasonable salary not to exceed twelve hundred dollars therefor and do all of the things required by the council under the provisions of said chapter 18 of the Acts of the Legislature of 1911 and any amendments thereto. (Acts 1929 (Muni. ch.), ch. 4, § 97.)

Editor's note.--As of Sept. 30, 1974, the city was not operating a jail, and city prisoners were confined in the county jail, pursuant to an agreement with the county court. For that reason, the city does not have a police matron.

For state law providing that, "notwithstanding any Charter provision to the contrary," the governing body of every municipality shall by ordinance fix the compensation of every municipal officer and employee; provided, that the salary of an officer shall not be increased or diminished during his term of office, see W. Va. Code, § 8-5-12.

Sec. 98. Codification of ordinances.

The city council shall cause any contract for the codifying and indexing of all the ordinances of the city to be fully completed, and such ordinances shall include all in force and effect up to the last day possible. Before such work is accepted by the council, it shall be completed in every respect and the council shall then cause it to be properly printed and securely bound in a permanent book. The council may by ordinance adopt the code to be prepared as a whole and when said ordinance adopting said code shall have been passed by the council, the said code shall be and become the law and ordinances of said city up to such time according to the tenor and effect thereof, and when printed in a book, the same shall be received as evidence as the ordinances of said city, unless errors or omissions be affirmatively shown therein, and no other publication thereof shall be made or required under the Charter, and the council shall cause all the ordinances of said city, either by printing a supplement thereof, to be brought up to date within a reasonable time after the printing of such ordinances, and in any event such supplement shall be printed, or, if necessary, a new copy of the ordinances shall be printed with-

in every four years, and the council shall cause a sufficient number of said books of the ordinances to be printed and to sell such number thereof as it may do so at such price as may be reasonable, and the number of books printed shall be fixed by the council. (Acts 1929 (Munl. ch.), ch. 4, § 98.)

For state law as to authority of city council to adopt a comprehensive code of ordinances, see W. Va. Code, § 8-11-4, subsec. (b).

Sec. 99. Cemeteries and burials.

Cemetery

It shall be the duty of the City of Charleston to provide suitable and proper places for the burial of the dead, which places may be in or out of the corporate limits of the said city. The city shall cause such places to be laid off into cemetery lots in a reasonable and proper way and shall sell said lots for a reasonable price, but it may take into consideration the location of each of such lots in fixing the prices thereof. The city council shall have all the powers and rights of condemnation of any real estate that it may wish for such purpose in the manner provided by law, and it may acquire by means of condemnation any real estate which has already been laid out as a cemetery by any person, association or corporation.

No burials of the bodies of deceased persons shall hereafter be permitted within the incorporated limits of the City of Charleston or within the space of one mile of such incorporated limits without the permission of said city shall be first had and obtained, and the City of Charleston, through its proper authorities, shall have power to pass all proper ordinances providing suitable penalties to carry out the powers here given said city.

No moneys received from the sale of lots in any cemetery so owned, or hereafter owned, by said city shall be used for any other purpose than the proper care and preparation of the ground, upkeep and expenses of said cemetery, the roads and ways to and through the same and for the purchase of additional property for cemetery purposes. (Acts 1929 (Munl. ch.), ch. 4, § 99.)

For state law as to authority of city council to acquire and maintain cemeteries and to regulate interments therein, see W. Va. Code, § 8-12-5, subsec. (42).

Sec. 100. Building inspector.

The building inspector shall be a competent person for the duties of his office and shall devote all his time to city work. He shall not be engaged or interested in the building business in any way or manner. The council shall by ordinance fix a proper salary for him. He shall see that the ordinances of

Sec. 102-a. Same--Division of city into zoning districts.

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 and the four succeeding sections, and within such districts it may regulate 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. (Acts 1929 (Muni. ch.), ch. 4, § 102-a.)

For state law as to zoning districts generally, see W. Va. Code, § 8-24-40.

For a case holding that the provisions of this section did not confer authority on the city to enact a building code or zoning ordinance which would be applicable to a building constructed by the state office building commission, created by chapter 43, Acts of the Legislature, 1939, on property purchased under the general appropriation act, contained in chapter 9, Acts of the Legislature, 1949, see Charleston v. Southeastern Con. Co., 134 W. Va. 666, 64 S.E.2d 676 (1950).

Sec. 102-b. Same--Design of zoning regulations; considerations in making.

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 overcrowding of land; to avoid undue concentration of population; or to facilitate the adequate provision of transportation, water, sewage, 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. (Acts 1929 (Muni. ch.), ch. 4, § 102-b.)

For state law as to municipal comprehensive plan, see W. Va. Code, § 8-24-16 et seq.

For a case holding that the provisions of this section did not confer authority on the city to enact a building code or zoning ordinance which would be applicable to a building constructed by the state office building commission, created by chapter 43, Acts of the Legislature, 1939, on property purchased under the general appropriation act, contained in chapter 9, Acts of the Legislature, see Charleston v. Southeastern Con. Co., 134 W. Va. 666, 64 S.E.2d 676 (1950).

Sec. 102-c. Same--Establishment, enforcement and change of zoning regulations and boundaries of zoning districts; hearing.

The council shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established and enforced, and from time to time amended, supplemented or changed. However, when demanded by any party in interest, no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in at least two newspapers of general circulation, published in the City of Charleston. (Acts 1929 (Muni. ch.), ch. 4, § 102-c.)

For state law as to action by municipal governing bodies on zoning ordinances, notice and hearing thereon, etc., see W. Va. Code, § 8-24-44.

Sec. 102-d. Same--Change or repeal of zoning regulations and boundaries; protests.

Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change signed by the owners of twenty per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof, extending one hundred feet therefrom, or of those directly opposite thereto, extending one hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of council. The provisions of the previous section relative to public hearings and official notice shall apply to all changes or amendments. (Acts 1929 (Muni. ch.), ch. 4, § 102-d.)

For state law as to amending, supplementing or changing zoning ordinance rules and regulations, see W. Va. Code, § 8-24-45 et seq.

Sec. 102-e, ¶ 1. Same--Zoning commission.

In order to avail itself of the powers conferred by this act [this Charter], the council shall appoint a commission to be known as the zoning commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such council shall not hold its public hearings or take action until it has received the final report of such commission. (Acts 1929 (Muni. ch.), ch. 4, § 102-e, ¶ 1.)

For state law as to municipal planning commissions, see W. Va. Code, § 8-24-1 et seq. As

the city and laws of the state concerning buildings are enforced and perform such other duties as the manager or council may direct. (Acts 1929 (Muni. ch.), ch. 4, § 100.)

Sec. 101. Power to buy, sell or exchange real estate.

The council shall have power to buy, sell, or exchange any real estate found necessary or convenient, in the opening, construction, straightening, widening or otherwise altering of any street, alley or public way within the city, and by resolution and proper deed to convey to any person, firm or corporation any land used, or heretofore or hereafter used, for street or other public purpose, when in the judgment of the council such land shall no longer be needed for such public use. (Acts 1929 (Muni. ch.), ch. 4, § 101.)

Sec. 102. Zoning--Power of city.

For the purpose of promoting health, safety, morals, or the general welfare of the city and community, the council is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residents or other purposes; provided, however, that any ordinance or by-laws enacted under the authority of this act [this Charter] shall exempt from the operation thereof any building or structure used or to be used by a public service corporation (not otherwise exempted) as to which proof shall be presented to the council of the City of Charleston provided for in this act, that the exemption of such building or structure is reasonably necessary to the convenience or welfare of the public. (Acts 1929 (Muni. ch.), ch. 4, § 102.)

For state law as to urban and rural planning and zoning generally, see W. Va. Code, ch. 8, art. 24. As to regional planning, see W. Va. Code, ch. 8, art. 25. For state law as to zoning authority of municipalities generally, see W. Va. Code, § 8-24-39.

For a case holding that the provisions of this section did not confer authority on the city to enact a building code or zoning ordinance which would be applicable to a building constructed by the state office building commission, created by chapter 43, Acts of the Legislature, 1939, on property purchased under the general appropriation act, contained in chapter 9, Acts of the Legislature, 1949, see Charleston v. Southeastern Con. Co., 134 W. Va. 666, 64 S.E.2d 676 (1950).

to certain powers and duties of municipal planning commissions relating to zoning, see W. Va. Code, §§ 8-24-42 through 8-24-47.

Sec. 102-e. ¶ 2. Repeal of inconsistent laws.

All acts heretofore passed relating to or amendatory of the Charter of the City of Charleston, and all other acts or parts of acts, coming within the purview of this act and inconsistent herewith, are hereby repealed. (Acts 1929 (Muni. ch.), ch. 4, § 102-e, ¶ 2.)

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, William J. Harris,

who has been duly elected to the office of Council 24 of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

(signature)

Subscribed and sworn to before me the undersigned authority,

this 22 day of March, 2004.

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14 day of Nov., 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, James Ealy,

who has been duly elected to the office of Council 4th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

(signature)

Subscribed and sworn to before me the undersigned authority,

this 15th day of March, 2004.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Thomas J. Lane,

who has been duly elected to the office of Council At-Large of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Jerry Ware,

who has been duly elected to the office of Council At-Large of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

Jerry L. Ware
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Linda Nielsen,

who has been duly elected to the office of Council for the 13th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

Linda Nielsen
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Bob White,

who has been duly elected to the office of Council for the 8th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

Bob White
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Ditty Markham,

who has been duly elected to the office of Council for the 19th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

Deatra L Markham
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Charlie Loeb,

who has been duly elected to the office of Council At-Large of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Mike Clowser,

who has been duly elected to the office of Council for the 21st Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Jack Harrison,

who has been duly elected to the office of Council for the 14th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

Jack E. Harrison
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Jim Harris, Jr.,

who has been duly elected to the office of Council for the 12th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

James J. Harris
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH

(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Patrick Jones,

who has been duly elected to the office of Council for the 1st Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Paul Monroe,

who has been duly elected to the office of Council for the 7th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

Paul Monroe
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Mary Jean Davis,

who has been duly elected to the office of Council At-Large of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

Mary Jean Davis
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Teresa Reed,

who has been duly elected to the office of Council for the 5th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

Teresa Reed
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Edward Talkington,

who has been duly elected to the office of Council for the 6th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Geneva Foster,

who has been duly elected to the office of Council for the 4th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

Geneva A. Foster
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, David Higgins,

who has been duly elected to the office of Council for the 15th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

D K Higgins
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH

(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, John Miller, Jr.,

who has been duly elected to the office of Council for the 18th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

John W. Miller Jr.
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Bobby Reishman,

who has been duly elected to the office of Council for the 17th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Brenda Robertson,

who has been duly elected to the office of Council for the 16th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

Brenda N. Robertson
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Mark A. Sadd,

who has been duly elected to the office of Council At-Large of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

Mark A. Sadd
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Marc Weintraub,

who has been duly elected to the office of Council for the 11th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Betty Morton,

who has been duly elected to the office of Council for the 9th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

Betty Morton
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Cheryle Hall,

who has been duly elected to the office of Council for the 20th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

Cheryle M. Hall
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, James Lanham,

who has been duly elected to the office of Council for the 3rd Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

James Moore Lanham
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

SEAL
PUBLIC
ST VIRGINIA
TH BALDWIN
of City Clerk
City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Harry Deitzler,

who has been duly elected to the office of Council At-Large of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

(signature)

Subscribed and sworn to before me the undersigned authority,

this 14th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH
(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Archie Chestnut,

who has been duly elected to the office of Council for the 10th Ward of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

Archie Chestnut
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

CITY OF CHARLESTON
WEST VIRGINIA

OFFICER'S OATH

(Sec. 24, City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, Danny Jones,

who has been duly elected to the office of Mayor of the City of Charleston, West Virginia, do solemnly swear that I will support the constitution of the United States and the State of West Virginia, and that I will faithfully and impartially discharge the duties of said office, during my continuance therein, to the best of my skill and judgment; and that I will not, in any way, or manner, become pecuniarily interested directly or indirectly in any contract with the City, in any franchise granted by it, or in the purchase of supplies therefore, so help me God.

(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ELIZABETH BALDWIN
Office of City Clerk
Rm. 301 City Hall, PO Box 2749
Charleston, WV 25330
My Commission Expires Nov. 14, 2011

Elizabeth Baldwin
Notary Public in and for Kanawha County

My commission expires on the 14th day of November, 2011.

By Mr. Crawford:

Bill No. 1486--A Bill to amend and reenact section one, article twenty-three, Streets and Public Services Law, Code of the City of Charleston, West Virginia, one thousand nine hundred fifty-seven, as amended, appointing two members to the Sanitary Board as provided by chapter sixteen, article thirteen, section eighteen, Code of West Virginia, one thousand nine hundred thirty-one, as amended.

Be it Ordained by the Council of the City of Charleston, West Virginia:

1. Section one, article twenty-three, Streets and Public Services Law, Code of the City of Charleston, West Virginia, one thousand nine hundred fifty-seven, as amended, be amended and reenacted to read as follows:

Section 1. Sanitary Board created; membership; terms.

There is hereby created and appointed the Sanitary Board of the City of Charleston consisting of the Mayor and two persons appointed by the governing body of the municipality. Said appointments shall be made by ordinance and members shall serve for a term of three years. The Mayor shall act as chairman of the board.

2. L. M. Milstead, Jr. is hereby appointed as a member of the Sanitary Board for the term expiring the sixteenth day of March, one thousand nine hundred seventy-five.

John D. Smallridge is hereby appointed as a member of the Sanitary Board for the term expiring the sixteenth day of March, one thousand nine hundred seventy-six.

3. The City Council hereby finds that it is a matter of urgent concern and a pressing public emergency requiring immediate action to update the Code of the City of Charleston to be in compliance with the Code of West Virginia.

The question being on the passage of the bill, a roll call was taken and there were--yeas 24, nays none and absent one, as follows:

YEAS: Barnett, Bennett, Bird, Brawley, Carp, Copenhaver, Crawford, Cummings, Duncan, Flint, Hall, Hunt, Kennedy, Layne, Matthews, Muzum, O'Connor, Preston, Quick, Sheets, Silverstein, Smith, Vanderwilt and Mayor Hutchinson.

NAYS: None.

ABSENT: Mullins.

So, all members present and voting having voted in the affirmative, the Mayor declared the bill (No. 1486) unanimously passed.

(The provisions of section eleven, article four (d), chapter eight of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, requiring the affirmative vote of two-thirds of the members elected to the Council to pass a bill in the case of a pressing public emergency is satisfied.)

Sec. 25-23. Obstruction.

No person shall obstruct, impede or cause to be impeded or obstructed the flow of any public sewer, nor interfere with the free discharge or ventilation thereof, nor clog up such sewer or any appurtenance thereof. (Code 1937, pt. 8, art. 25, § 8.)

Sec. 25-24. License required to engage in business of laying or constructing sewers or drainways.

It shall be unlawful for any person to engage in the business of laying or constructing sewers or drainways in, under or upon any of the streets, alleys, walks or public highways of the city without having first annually secured from the sanitary board a license therefor, paying for such license the sum of twenty five dollars.

No such license shall be issued until the sanitary board is satisfied of the reliability and capacity of the applicant to do and perform in a good and workmanlike manner the particular form, class or kind of work that shall be specified in the application for license for any or all of the purposes set forth in this section, and until the applicant shall also have given any bond required by any other ordinance of the city in relation to such matters. (Code 1937, pt. 8, art. 1, § 3.)

Article II. Sanitary Board.

For a case holding that the ordinance codified in this article is valid and constitutional, and that a contract between the sanitary board created by such ordinance and a construction company in furtherance of the provisions of the ordinance was valid, see West Va. Water Service Co. v. Cunningham, 143 W. Va. 1, 98 S.E. 2d 891 (1957).

As to sewerage service charges when water from commercial wells is discharged from premises into city sewers, see § 22-20 of this Code.

Sec. 25-25. Created; powers and duties; composition; appointment and term of members.

There is hereby created in and for the city a sanitary board, which shall be charged with the custody, supervision, control, administration, operation and maintenance of the municipal sewage system, all as permitted and provided by article 13 of chapter 16 of the Code of West Virginia. The sanitary board shall be composed of the mayor and two persons appointed by the city council, one of whom shall be a registered professional engineer; provided, that when

no city sewer is under construction a registered professional engineer need not be a member of the board. The two appointed members of the board shall each serve for a term of three years and until his successor is duly appointed and has qualified, and vacancies shall be filled for the unexpired term only. (Code 1957, pt. 9, art. 23, §§ 1, 2; Ord. No. 1486, 11-19-73, § 1.)

Editor's note.--Original appointments were made pursuant to the ordinance here codified at such time and for such terms that one vacancy for an appointed member occurs March 18, 1973 and every three years thereafter, and one such vacancy occurs March 18, 1976 and every three years thereafter.

For state law basis of this section, see W. Va. Code, § 16-13-18.

Sec. 25-26. Officers: salaries: bond of treasurer.

The sanitary board shall elect a vice chairman from its members and shall designate a secretary and treasurer (who may be one and the same person) who need not be members of the board and who shall hold office at the will of the board.

Each member of the board, other than the mayor, shall receive such salary as may be provided from time to time by the city council and shall be entitled to payment for his reasonable expenses incurred in the performance of his duties.

The secretary and treasurer shall be paid such reasonable compensation for services as from time to time may be fixed by the city council, and the treasurer shall give bond, with qualified corporate surety, in the amount of five thousand dollars or such other amount as the council may require, conditioned for the proper application of all moneys received by him as such and for the faithful performance of the duties of his office.

All compensation, and all expense, incurred by the sanitary board, its officers and employees, shall be paid solely from funds authorized to be collected and received by the board as provided by article 13, chapter 16 of the Code of West Virginia. (Code 1957, pt. 9, art. 23, § 3.)

For state law basis of this section, see W. Va. Code, § 16-13-18.

Sec. 25-27. Powers and duties.

(a) The construction, acquisition, improvement, equipment, custody, operation, maintenance and administration of all works for the collection, treatment or disposal of sewage within the city and in such other areas as may be

OFFICER'S OATH

(Section 24 City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, JAY C. GOLDMAN, WHO HAVE BEEN DULY APPOINTED TO THE OFFICE OF CHAIRMAN OF THE SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, DO SOLEMNLY SWARE THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES AND THE STATE OF WEST VIRGINIA AND THAT I WILL FAITHFULLY AND IMPARTIALLY DISCHARGE THE DUTIES OF SAID OFFICE, DURING MY CONTINUANCE THEREIN, TO THE BEST OF MY SKILL AND JUDGEMENT; AND THAT I WILL NOT, IN ANY WAY, OR MANNER, BECOME PECUNIARILY INTERESTED DIRECTLY OR INDIRECTLY IN ANY CONTRACT WITH THE CITY, IN ANY FRANCHISE GRANTED BY IT, OR IN THE PURCHASE OF SUPPLIES THEREFOR, SO HELP ME GOD.

Subscribed and sworn to before me, the undersigned authority, this 16th day of February, 2001.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
KATHLEEN ANN DARR
CITY OF CHARLESTON
P.O. BOX 1719
CHARLESTON, WV 25323
My Commission Expires March 20th, 2006

Kathleen Ann Darr
Notary Public in and for Kanawha County

My commission expires on the 20th day of March, 2006

OFFICER'S OATH

(Section 24 City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, JOHN H. TINNEY, WHO HAVE BEEN DULY APPOINTED TO THE OFFICE OF SECRETARY OF THE SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, DO SOLEMNLY SWARE THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES AND THE STATE OF WEST VIRGINIA AND THAT I WILL FAITHFULLY AND IMPARTIALLY DISCHARGE THE DUTIES OF SAID OFFICE, DURING MY CONTINUANCE THEREIN, TO THE BEST OF MY SKILL AND JUDGEMENT; AND THAT I WILL NOT, IN ANY WAY, OR MANNER, BECOME PECUNIARILY INTERESTED DIRECTLY OR INDIRECTLY IN ANY CONTRACT WITH THE CITY, IN ANY FRANCHISE GRANTED BY IT, OR IN THE PURCHASE OF SUPPLIES THEREFOR, SO HELP ME GOD.

John H. Tinney

Subscribed and sworn to before me, the undersigned authority, this 19th day of February, 2001.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
JUNE FARNSWORTH
3661 TOLLEY DRIVE
SISSONVILLE, WV 25320
My Commission Expires Sept. 7, 2004

June Farnsworth
Notary Public in and for Kanawha County

My commission expires on the 7th day of September, 2004

OFFICER'S OATH

(Section 24 City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, SAMUEL M. BOWLING, P.E., WHO HAVE BEEN DULY APPOINTED TO THE OFFICE OF MEMBER OF THE SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, DO SOLEMNLY SWARE THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES AND THE STATE OF WEST VIRGINIA AND THAT I WILL FAITHFULLY AND IMPARTIALLY DISCHARGE THE DUTIES OF SAID OFFICE, DURING MY CONTINUANCE THEREIN, TO THE BEST OF MY SKILL AND JUDGEMENT; AND THAT I WILL NOT, IN ANY WAY, OR MANNER, BECOME PECUNIARILY INTERESTED DIRECTLY OR INDIRECTLY IN ANY CONTRACT WITH THE CITY, IN ANY FRANCHISE GRANTED BY IT, OR IN THE PURCHASE OF SUPPLIES THEREFOR, SO HELP ME GOD.

S M Bowling

Subscribed and sworn to before me, the undersigned authority, this 16th day of February, 2001

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
KATHLEEN ANN DARR
CITY OF CHARLESTON
CHARLESTON, WV 25303
My Commission Expires March 20, 2006

Kathleen Ann Darr

Notary Public in and for Kanawha County

My commission expires on the 20 day of March, 2006

OFFICER'S OATH

(Section 24 City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, GREGORY L. BURTON, WHO HAVE BEEN DULY APPOINTED TO THE OFFICE OF FINANCIAL ADVISOR OF THE SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, DO SOLEMNLY SWARE THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES AND THE STATE OF WEST VIRGINIA AND THAT I WILL FAITHFULLY AND IMPARTIALLY DISCHARGE THE DUTIES OF SAID OFFICE, DURING MY CONTINUANCE THEREIN, TO THE BEST OF MY SKILL AND JUDGEMENT; AND THAT I WILL NOT, IN ANY WAY, OR MANNER, BECOME PECUNIARILY INTERESTED DIRECTLY OR INDIRECTLY IN ANY CONTRACT WITH THE CITY, IN ANY FRANCHISE GRANTED BY IT, OR IN THE PURCHASE OF SUPPLIES THEREFOR, SO HELP ME GOD.

Gregory A Burton

Subscribed and sworn to before me, the undersigned authority, this 16th day of February, 2001.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
KATHLEEN ANN DARR
CITY OF CHARLESTON
P.O. BOX [illegible]
CHARLESTON, WV [illegible]
My Commission Expires March 20, 2008

Kathleen Ann Darr

Notary Public in and for Kanawha County

My commission expires on the 20th day of March, 2008

OFFICER'S OATH

(Section 24 City Charter)

The State of West Virginia, City of Charleston, County of Kanawha, to wit:

I, KATHLEEN A. DARR, WHO HAVE BEEN DULY APPOINTED TO THE OFFICE OF GENERAL MANAGER OF THE SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, DO SOLEMNLY SWARE THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES AND THE STATE OF WEST VIRGINIA AND THAT I WILL FAITHFULLY AND IMPARTIALLY DISCHARGE THE DUTIES OF SAID OFFICE, DURING MY CONTINUANCE THEREIN, TO THE BEST OF MY SKILL AND JUDGEMENT; AND THAT I WILL NOT, IN ANY WAY, OR MANNER, BECOME PECUNIARILY INTERESTED DIRECTLY OR INDIRECTLY IN ANY CONTRACT WITH THE CITY, IN ANY FRANCHISE GRANTED BY IT, OR IN THE PURCHASE OF SUPPLIES THEREFOR, SO HELP ME GOD.

Kathleen A. Darr

Subscribed and sworn to before me, the undersigned authority, this 21st day of February, 2001.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
SHARON A. PAYNE
SOUTH CHARLESTON WV 25303
My Commission Expires AUGUST 9, 2009

Sharon A Payne
Notary Public in and for Kanawha County

My commission expires on the 9th day of August, 2009

020370com053102.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 31st day of May, 2002.

CASE NO. 02-0370-S-PW

CHARLESTON SANITARY BOARD
Petition for waiver of the Commission's filing requirements
for a certificate of convenience and necessity (filed by counsel).

COMMISSION ORDER

On March 21, 2002, the City of Charleston Sanitary Board (Sanitary Board) filed a "Petition for Declaratory Ruling" requesting the Commission issue a ruling that a certificate of convenience and necessity is not required for the Sanitary Board's proposed replacement of and addition to its telemetry system.

Commission Staff filed its "Initial and Final Joint Staff Memorandum" on April 24, 2002. Staff noted that the project would cost approximately thirteen percent (13%) of gross annual revenue, the project would require a debt service of less than fifteen percent (15%) of the year end surplus available to the Sanitary Board, the cost of hiring new employees as a substitute for the telemetry represents a far greater annual cost to the Sanitary Board, and the rates will not be affected by the borrowing necessary for the project. Staff further noted that the replacement of the 1987 telemetry system for forty-seven (47) sewage pumping stations is important to allow a quick response to failures at the stations for the protection of the customers and the environment. The Staff explained that the Sanitary Board is going to replace the telemetry system on fourty-seven (47) currently monitored stations and provide telemetry to its remaining sewage pumping stations for a total of eighty-two (82) monitored stations. Staff stated that the replacement/update is estimated to cost $1,125,000 and will be paid with a WVSRF loan at 3% rate of interest with a 20-year repayment period. Staff noted that West Virginia Code § 24-2-11 provides that a public utility need not obtain a certificate of convenience and necessity for "ordinary extensions of existing systems in the usual course of business."

DISCUSSION

The Commission agrees with Staff's recommendation and will grant the requested waiver for need of a certificate in this matter.

FINDINGS OF FACT

1. On March 21, 2002, the City of Charleston Sanitary Board requested a declaratory ruling finding that a certificate of convenience and necessity was not required for the Sanitary Board's proposed replacement of and addition to its telemetry system.

2. Commission Staff filed its "Initial and Final Joint Staff Memorandum" on April 24, 2002. Therein Staff noted that the project would cost approximately thirteen percent (13%) of gross annual revenue for the Sanitary Board, the project would require a debt service of less than fifteen percent (15%) of the year end surplus available to the Sanitary Board, and that the rates of the Sanitary Board would not be affected by the borrowing necessary for the project.

CONCLUSIONS OF LAW

The Commission concludes that replacement/extension of the existing telemetry system is an extension in the ordinary course of business. As such, the Commission shall grant the Sanitary Board's request for a ruling that a certificate of convenience and necessity is not needed in this instance.

ORDER

IT IS THEREFORE ORDERED that the City of Charleston Sanitary Board's petition for a Commission ruling finding that a certificate of convenience and necessity is not required for the Sanitary Board's proposed replacement/extension of its telemetry system as filed on March 21, 2002, is hereby granted.

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

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

A True Copy, Teste:

Sandra Squire

Sandra Squire
Executive Secretary

ARC
JJW/lfg
020370c.wpd

PUBLIC SERVICE COMMISSION

OF WEST VIRGINIA

CHARLESTON

Issued: October 10, 2003

CASE NO. 03-0437-S-CN

CITY OF CHARLESTON SANITARY BOARD
Application for a certificate of convenience and necessity to construct improvements to the existing sanitary sewer system.

RECOMMENDED DECISION

On March 25, 2003, the City of Charleston Sanitary Board ("Sanitary Board"), by counsel Susan J. Riggs, filed with the Public Service Commission ("Commission"), pursuant to W.Va. Code § 24-2-11, an application for a certificate of convenience and necessity to construct improvements to its existing sanitary sewer system. The application stated that the Sanitary Board proposed the following improvements: "to (a) replace the existing treatment plant headworks, repair and upgrade the existing anaerobic digests, and install a new compressor for the Pressure Swing Adsorption unit, and (b) upgrade one influent pump station," the Patrick Street pump station. The application further stated that the project will be funded by a Clean Water State Revolving Fund ("SRF") loan. The application provided that the Sanitary Board had applied for all applicable permits, and finally clarified that no rate increases were necessary.

On March 26, 2003, the Commission directed the Sanitary Board to publish a Notice of Filing, which included the requirement that any protest be filed within thirty days of the date of publication.

On April 7, 2003 Staff Attorney Cassius H. Toon filed an Initial Joint Staff Memorandum, with an attached memorandum from David W. Holley, of the Engineering Division, stating further information that was needed for Staff's review.

On April 15, 2003, the Commission, by Order, referred this matter to the Division of Administrative Law Judges ("ALJ Division") for decision on or before October 22, 2003.

On May 2, 2003, the Sanitary Board, by counsel, filed responses to Staff's requests.

On May 7, 2003, the Sanitary Board, by counsel, filed an affidavit establishing that the Notice of Filing had been published on April 19, 2003, in The Charleston Gazette.

On June 9, 2003, the Sanitary Board, by counsel, filed further responses to Staff's requests for information.

On June 12, 2003, the undersigned ALJ issued a Procedural Order requiring Staff to file its final recommendation no later than July 8, 2003.

On July 7, 2003, the Sanitary Board, by counsel, filed a letter, dated the same day, from the West Virginia Department of Environmental Protection ("DEP") committing to an SRF loan in the amount of $8,673,662, to be issued at a 2% annual interest rate, plus an annual administrative fee of 1%, for a term of 20 years.

On July 8, 2003, Mr. Toon filed a Final Joint Staff Memorandum, with attached memoranda from Mr. Holley

and Robert R. McDonald, of the Utilities Division. Staff stated the following: This project is Phase I of two phases of improvements on the sewer system. The Sanitary Board's wastewater treatment plant was last upgraded in 1986, and has been experiencing episodes of reduced treatment performance, which have led to numerous effluent discharge violations; the Sanitary Board entered into a consent decree with DEP, which included a schedule for upgrades to enable compliance with the Sanitary Board's WV/NPDES permit requirements. The total cost of this project, Phase I, is estimated at $9,512,662, and the total construction cost is estimated at $6,100,000. The project will be funded by the $8,637,662 SRF loan, along with Sanitary Board funds of $875,000. Noting that no increase in rates will be proposed, Mr. McDonald stated that the present rates would provide debt service coverage of over 130%. The engineering costs, totaling $1,735,000, would be approximately twice the normal percentage of the construction and total project costs, but Mr. Holley indicated that the engineering costs were acceptable for the circumstances of this matter. That is, the planning engineering costs were for both Phase I and Phase II, and the design engineering costs were high because the Sanitary Board did not have accurate drawings of its system; such had to be prepared before the improvements could be designed. Finally, the engineer was asked to expedite this matter.See FootNote [1] Staff recommended that the application be granted, subject to the Sanitary Board's filing a statement from DEP that the drawing and

specifications were approved and a copy of the WV/NPDES Water Pollution Control Permit from DEP.

On July 11, 2003, the undersigned ALJ issued a Procedural Order stating that the application would be granted immediately upon the filing of the outstanding letter and permit.

On October 8, 2003, the Sanitary Board, by counsel, filed an October 7, 2003 letter from Mike Johnson, Assistant Director, DEP, advising the Sanitary Board of the following:

1. The approval letter for the plans and specifications has been prepared and forwarded to DEP Cabinet Secretary Stephanie Timmermeyer for her signature.

2. The modifications to your NPDES permit will be approved on or before November 7, 2003.

By cover letter, the Sanitary Board requested that the letter from DEP be deemed sufficient to comply with the July 11, 2003 Procedural Order.

DISCUSSION

The outstanding approval letter and the permit are necessary for approval of the project, even though the October 8, 2003 letter demonstrates that they will be available shortly. Accordingly, the undersigned ALJ will grant the application and approve the project, contingent upon receipt of the outstanding letter and the NPDES permit.

FINDINGS OF FACT

1. On March 25, 2003, the City of Charleston Sanitary Board filed with the Public Service Commission an application for a certificate of convenience and necessity to construct improvements to its existing sanitary sewer system. The application stated that the Sanitary Board proposed the following improvements: "to (a) replace the existing treatment plant headworks, repair and upgrade the existing anaerobic digests, and install a new compressor for the Pressure Swing Adsorption unit, and (b) upgrade one influent pump station," the Patrick Street pump station. (See application).

2. This project is Phase I of two phases of improvements on the sewer system. The Sanitary Board's wastewater treatment plant was last upgraded in 1986, and has been experiencing episodes of reduced treatment performance, which have led to numerous effluent discharge violations. The Sanitary Board entered into a consent decree with DEP, which included a schedule for upgrades to enable compliance with the Sanitary Board's WV/NPDES permit requirements. The

project is needed for the Sanitary Board to achieve compliance with its NPDES permit, and otherwise to improve

treatment of wastewater by the Sanitary Board. (See application; Final Joint Staff Memorandum filed July 8, 2003).

3. The total cost of this project, Phase one, is estimated at $9,512,662, and the total construction cost is estimated at $6,100,000. Staff found the costs to be acceptable. (See application; Final Joint Staff Memorandum).

4. The project will be funded by an $8,637,662 State Revolving Fund loan, to be issued at a 2% annual interest rate, plus an annual administrative fee of 1%, for a term of 20 years, and Sanitary Board funds of $875,000. (See application; Final Joint Staff Memorandum).

5. The Sanitary Board is not proposing to raise its rates. The present rates will provide debt service coverage of over 130%. (See application; Final Joint Staff Memorandum).

6. Staff recommended that the application be granted and the project be approved, contingent upon the DEP's approving the drawings and specifications for the project and upon DEP's issuing a NPDES Water Pollution Control Permit. Staff also recommended that the funding be approved. (See Final Joint Staff Memorandum).

7. On October 7, 2003, DEP advised the Sanitary Board that the letter of approval of the plans and specifications had been prepared and forwarded to DEP Cabinet Secretary Stephanie Timmermeyer for her signature, and that the modifications to the Sanitary Board's NPDES permit would be approved on or before November 7, 2003. (See letter filed October 8, 2003).

8. The Notice of Filing was published on April 19, 2003, in The Charleston Gazette, and no protest was filed. (See affidavit of publication filed May 7, 2003; case file generally).

CONCLUSION OF LAW

It is appropriate to grant the application, pursuant to W.Va. Code §24-2-11, and to approve the project, contingent upon the receipt from DEP of a letter of approval of the drawings and specifications and the NPDES permit, and to approve the project's funding, because convenience and necessity require the project; the funding is appropriate; no protest has been filed; and Commission Staff recommended such approvals.

ORDER

IT IS, THEREFORE, ORDERED that the application filed on March 23, 2003, by the City of Charleston Sanitary Board for a certificate of convenience and necessity to construct improvements to its existing sanitary sewer system is granted and the project is approved, contingent upon receipt by the City of Charleston Sanitary Board of a letter of approval of the drawing and specifications and of a NPDES permit from the West Virginia Division of Environmental Protection.

IT IS FURTHER ORDERED that the City of Charleston Sanitary Board file with the Commission as soon as possible copies of said outstanding letter and permit.

IT IS FURTHER ORDERED that the funding for the project, consisting of an $8,637,662 State Revolving Fund loan, payable over 20 years, at 2% annual interest plus a 1% annual administrative fee of 1%, and Sanitary Board funds of $875,000, is approved.

IT IS FURTHER ORDERED that this matter be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order upon Commission Staff by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary

within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served 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 Executive 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 waiver by the Commission.

Sunya Anderson
Administrative Law Judge

SA:s
030437ab.wpd

Footnote: 1

[1]*In Case No. 02-1038-S-PW (2002), the Sanitary Board requested a waiver of the requirements for a certificate of convenience and necessity for the improvements involved in this matter. The petition was denied by the Commission, but the Commission ruled, "The certificate application, when filed, should be handled expeditiously." Concl. of Law 2.*

West Virginia Infrastructure & Jobs Development Council

Public Members:
Russell L. Isaacs, Chairman
Cottageville
Henry Harmon, Vice Chairman
Hurricane
Dwight Calhoun
Petersburg
William P. Stafford, II, Esquire
Princeton

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

Katy Mallory, PE
Executive Secretary

KMallory@ezwv.com

April 3, 2002

Ms. Kathleen Rushworth, P.E., General Manager
City of Charleston Sanitary Board
208 26th Street
Charleston, West Virginia 25312

Re: City of Charleston Sanitary Board
Sewer Upgrade Project 2002S-682

Dear Ms. Rushworth:

The West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") has reviewed the City of Charleston Sanitary Board's (the "Board") preliminary application regarding its proposed project to replace 82 obsolete sewage pumping station telemetry systems (the "Project").

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

Upon consideration of the preliminary application, the Infrastructure Council recommends that the Board pursue a Clean Water State Revolving Fund loan of $1,125,000 to finance this Project. Please contact the Department of Environmental Protection at 558-0641 for specific information on the steps the Board needs to follow to apply for these funds. **Please note that this letter <u>does not</u> constitute funding approval from this agency.**

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

Sincerely,

Russell L. Isaacs

RLI/km
cc: Mike Johnson, DEP (w/o enclosure)
Region III Planning & Development Council

West Virginia Infrastructure & Jobs Development Council

Public Members:
Mark Prince, Chairman
Hurricane
Dwight Calhoun, Vice Chairman
Petersburg
C. R. "Rennie" Hill, III
Beckley
Timothy Stranko
Morgantown

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

Katy Mallory, PE
Executive Secretary

Katy.Mallory@verizon.net

March 3, 2004

Kathleen Rushworth, P.E., General Manager
Charleston Sanitary Board
208 26th Street
Charleston, West Virginia 25312

Re: City of Charleston Sanitary Board
Sewer Projects 2002S-682 / 2002S-704

Dear Ms. Rushworth:

The West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") has reviewed the City of Charleston Sanitary Board's (the "City") revised preliminary application regarding its proposed projects: (2002S-682) to replace the obsolete sewage pumping station telemetry systems and (2002S-704) to renovate the existing anaerobic sludge digesters, replace failing headworks system, install a new air compressor for the Pressure Swing Adsorption unit, and upgrade one influent pumping station (the "Projects").

The Infrastructure Council recommends the City utilize a $9,835,120 Clean Water State Revolving Fund loan and a City contribution of $812,450 to fund these projects for $10,647,570. Please contact the Department of Environmental Protection office at 558-0641 for specific information on the steps the City needs to follow to apply for these funds. **Please note this letter <u>does not</u> constitute funding approval from this agency.**

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

Sincerely,

Mark Prince

cc: Mike Johnson, DEP
Rose Brodersen, DEP
Region III Planning & Development Council

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

LOAN AGREEMENT

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

CITY OF CHARLESTON (PLANT UPGRADE/TELEMETRY)
(Local Government)

W I T N E S S E T H:

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

The Project and the System

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

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and the Local Act, the Local Government has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Local Government by the Consulting Engineers.

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

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

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

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

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

2.7 The Local Government shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Local Government shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and DEP and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Local Government, the Local Government or (at the option of the Local Government) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Local Government, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the

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 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 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 shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall 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 50% 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 acquisition or construction of the Project and for two years following the completion of acquisition or construction 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 DEP and 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 such forms 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 and DEP 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 construction financing, 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") and the West Virginia Infrastructure and Jobs Development Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

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

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

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

(i) to pay Operating Expenses of the System;

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

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

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

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

(b) Covenants substantially as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V

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

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

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

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

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

ARTICLE VI

Other Agreements of the Local Government

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

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

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

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

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

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

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

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

ARTICLE VII

Miscellaneous

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

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

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

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

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

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

7.7 This Loan Agreement shall terminate upon the earlier of:

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

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

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

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

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

CITY OF CHARLESTON
[Name of Local Government]

(SEAL)

By: _____
Its: Mayor
Date: 2-26-2004

Attest:

_____
Its: Recorder

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

By: _____
Its: Director
Date: 3-2-04

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: _____
Its: Director
Date: February 25, 2004

Attest:

_____
Its: Secretary-Treasurer

000832/00372
01/12/04

EXHIBIT A

FORM OF PERFORMANCE CERTIFICATE

[To Be Provided By DEP]

EXHIBIT B

MONTHLY FINANCIAL REPORT

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

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

_____
Name of Person Completing Form

_____
Address

_____
Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

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

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

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

Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are $1,200, then $30 (2.5% of $1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Government.

The Local Government must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.

EXHIBIT C

PAYMENT REQUISITION FORM

(All Copies to Be Provided by DEP for Each Project)

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____
(Issuer)

_____
(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No._____, of _____, Consulting Engineers, _____, _____, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the bond _____ adopted or enacted by the Issuer on _____, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), dated _____.

2. The Bonds are being issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least _____ years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing

set forth in Schedule A attached hereto as Exhibit A, and my firm[1] has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof[2], the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this ____ day of _____, ____.

_____

By _____

West Virginia License No. _____

[SEAL]

---

[1]If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____, Esq.] and delete "my firm has ascertained that".

[2]If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of _____ of even date herewith," at the beginning of (ix).

EXHIBIT E

SPECIAL CONDITIONS

A. PUBLIC RELEASE REQUIREMENT - The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, groundbreaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. AUDIT REQUIREMENT [Supplement to Article IV 4.1 (b) (xi)] - Effective October 1, 2003, the Local Government that receives $500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

EXHIBIT F

MONTHLY PAYMENT FORM

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: [Name of bond issue]

Ladies and Gentlemen:

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

Sinking Fund:

Interest	$_____
Principal	$_____
Total:	$_____
Reserve Account:	$_____

Witness my signature this ___ day of_____.

[Name of Local Government]

By: _____
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

OPINION OF BOND COUNSEL FOR LOCAL GOVERNMENT

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

Ladies and Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated _____, _____, including all schedules and exhibits attached thereto (the "Loan Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, _____ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of $_____, in the form of one bond, registered as to principal and interest to the Authority, with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning _____ 1, _____, and ending _____ 1, _____, all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond _____ duly adopted or enacted by the Local Government on _____, as supplemented by the supplemental resolution duly adopted by the Local Government on _____

(collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Local Government and is a valid and binding special obligation of the Local Government, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Local Government without the consent of the Authority and the DEP.

3. The Local Government is a duly organized and validly existing _____ _____, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Local Government and constitute valid and binding obligations of the Local Government, enforceable against the Local Government in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Local Government to the Authority and are valid, legally enforceable and binding special obligations of the Local Government, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds	$9,835,120
Purchase Price of Local Bonds	$9,835,120

The Local Bonds shall bear no interest from the date of delivery to and including August 31, 2005. Commencing September 1, 2005, interest on the Local Bonds is payable quarterly, at a rate of 2% per annum. Commencing September 1, 2005, principal of the Local Bonds is payable quarterly, with an administrative fee of 1%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Government shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

The Local Bonds are fully registered in the name of the Authority as to principal and interest, if any, and the Local Bonds shall grant the Authority a first lien on the net or gross revenues of the Local Government's system as provided in the Local Act.

The Local Government may prepay the Local Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and DEP. The Local Government shall request approval from the Authority and DEP in writing of any proposed debt which will be issued by the Local Government on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Local Government:

See next page.

CITY OF CHARLESTON
SEWER REVENUE BONDS
WATER DEVELOPMENT AUTHORITY

SERIES	ISSUED	AMOUNT
1989A	03/21/89	$1,912,194
1989C	11/21/89	829,856
1993A	12/02/93	773,237*
1996A	10/09/96	2,671,058*
1996B	11/26/96	395,299*
1997A	07/22/97	732,688*
1997B	10/07/97	5,237,584*
1998A	12/10/98	994,537*
1999A	06/22/99	686,229
2001A	02/22/01	1,111,357*
2001B	05/22/01	823,741

* CWSRF

CITY OF CHARLESTON
SEWER REFUNDING REVENUE BONDS

2002A	12/01/02	1,755,000
2002B	12/01/02	5,160,000

City of Charleston

Loan of $9,835,120
2.0% Interest Rate, 1.0% Administrative Fee, 20 Years
Closing Date: March 23, 2004

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
6/01/2004	-	-	-	-
9/01/2004	-	-	-	-
12/01/2004	-	-	-	-
3/01/2005	-	-	-	-
6/01/2005	-	-	-	-
9/01/2005	100,289.07	2.000%	49,175.60	149,464.67
12/01/2005	100,790.52	2.000%	48,674.15	149,464.67
3/01/2006	101,294.47	2.000%	48,170.20	149,464.67
6/01/2006	101,800.94	2.000%	47,663.73	149,464.67
9/01/2006	102,309.95	2.000%	47,154.73	149,464.68
12/01/2006	102,821.50	2.000%	46,643.18	149,464.68
3/01/2007	103,335.60	2.000%	46,129.07	149,464.67
6/01/2007	103,852.28	2.000%	45,612.39	149,464.67
9/01/2007	104,371.54	2.000%	45,093.13	149,464.67
12/01/2007	104,893.40	2.000%	44,571.27	149,464.67
3/01/2008	105,417.87	2.000%	44,046.80	149,464.67
6/01/2008	105,944.96	2.000%	43,519.71	149,464.67
9/01/2008	106,474.68	2.000%	42,989.99	149,464.67
12/01/2008	107,007.06	2.000%	42,457.62	149,464.68
3/01/2009	107,542.09	2.000%	41,922.58	149,464.67
6/01/2009	108,079.80	2.000%	41,384.87	149,464.67
9/01/2009	108,620.20	2.000%	40,844.47	149,464.67
12/01/2009	109,163.30	2.000%	40,301.37	149,464.67
3/01/2010	109,709.12	2.000%	39,755.55	149,464.67
6/01/2010	110,257.66	2.000%	39,207.01	149,464.67
9/01/2010	110,808.95	2.000%	38,655.72	149,464.67
12/01/2010	111,363.00	2.000%	38,101.68	149,464.68
3/01/2011	111,919.81	2.000%	37,544.86	149,464.67
6/01/2011	112,479.41	2.000%	36,985.26	149,464.67
9/01/2011	113,041.81	2.000%	36,422.86	149,464.67
12/01/2011	113,607.02	2.000%	35,857.66	149,464.68
3/01/2012	114,175.05	2.000%	35,289.62	149,464.67
6/01/2012	114,745.93	2.000%	34,718.74	149,464.67
9/01/2012	115,319.66	2.000%	34,145.02	149,464.68
12/01/2012	115,896.26	2.000%	33,568.42	149,464.68
3/01/2013	116,475.74	2.000%	32,988.94	149,464.68
6/01/2013	117,058.12	2.000%	32,406.56	149,464.68
9/01/2013	117,643.41	2.000%	31,821.27	149,464.68
12/01/2013	118,231.62	2.000%	31,233.05	149,464.67
3/01/2014	118,822.78	2.000%	30,641.89	149,464.67
6/01/2014	119,416.89	2.000%	30,047.78	149,464.67
9/01/2014	120,013.98	2.000%	29,450.69	149,464.67
12/01/2014	120,614.05	2.000%	28,850.62	149,464.67
3/01/2015	121,217.12	2.000%	28,247.55	149,464.67
6/01/2015	121,823.20	2.000%	27,641.47	149,464.67
9/01/2015	122,432.32	2.000%	27,032.35	149,464.67
12/01/2015	123,044.48	2.000%	26,420.19	149,464.67

City of Charleston

Loan of $9,835,120
2.0% Interest Rate, 1.0% Administrative Fee, 20 Years
Closing Date: March 23, 2004

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
3/01/2016	123,659.71	2.000%	25,804.97	149,464.68
6/01/2016	124,278.00	2.000%	25,186.67	149,464.67
9/01/2016	124,899.39	2.000%	24,565.28	149,464.67
12/01/2016	125,523.89	2.000%	23,940.78	149,464.67
3/01/2017	126,151.51	2.000%	23,313.16	149,464.67
6/01/2017	126,782.27	2.000%	22,682.40	149,464.67
9/01/2017	127,416.18	2.000%	22,048.49	149,464.67
12/01/2017	128,053.26	2.000%	21,411.41	149,464.67
3/01/2018	128,693.53	2.000%	20,771.15	149,464.68
6/01/2018	129,336.99	2.000%	20,127.68	149,464.67
9/01/2018	129,983.68	2.000%	19,480.99	149,464.67
12/01/2018	130,633.60	2.000%	18,831.07	149,464.67
3/01/2019	131,286.77	2.000%	18,177.91	149,464.68
6/01/2019	131,943.20	2.000%	17,521.47	149,464.67
9/01/2019	132,602.91	2.000%	16,861.76	149,464.67
12/01/2019	133,265.93	2.000%	16,198.74	149,464.67
3/01/2020	133,932.26	2.000%	15,532.41	149,464.67
6/01/2020	134,601.92	2.000%	14,862.75	149,464.67
9/01/2020	135,274.93	2.000%	14,189.74	149,464.67
12/01/2020	135,951.30	2.000%	13,513.37	149,464.67
3/01/2021	136,631.06	2.000%	12,833.61	149,464.67
6/01/2021	137,314.22	2.000%	12,150.46	149,464.68
9/01/2021	138,000.79	2.000%	11,463.88	149,464.67
12/01/2021	138,690.79	2.000%	10,773.88	149,464.67
3/01/2022	139,384.25	2.000%	10,080.43	149,464.68
6/01/2022	140,081.17	2.000%	9,383.51	149,464.68
9/01/2022	140,781.57	2.000%	8,683.10	149,464.67
12/01/2022	141,485.48	2.000%	7,979.19	149,464.67
3/01/2023	142,192.91	2.000%	7,271.76	149,464.67
6/01/2023	142,903.87	2.000%	6,560.80	149,464.67
9/01/2023	143,618.39	2.000%	5,846.28	149,464.67
12/01/2023	144,336.48	2.000%	5,128.19	149,464.67
3/01/2024	145,058.17	2.000%	4,406.51	149,464.68
6/01/2024	145,783.46	2.000%	3,681.22	149,464.68
9/01/2024	146,512.37	2.000%	2,952.30	149,464.67
12/01/2024	147,244.94	2.000%	2,219.74	149,464.68
3/01/2025	147,981.16	2.000%	1,483.51	149,464.67
6/01/2025	148,721.07	2.000%	743.61	149,464.68
Total	**9,835,120.00**	**-**	**2,122,053.80**	**11,957,173.80 ***

***Plus $13,262.85 one-percent administrative fee paid quarterly. Total fee paid over life of loan is $1,061,028.**

Ferris, Baker Watts
West Virginia Public Finance Office

File = City of Charleston Loans.sf-SRF 2-24-04- SINGLE PURPOSE
2/24/2004 1:30 PM

P.S.C. W. Va. No. 17
Canceling P.S.C. W. Va. No. 16

CHARLESTON, THE CITY OF, a municipal corporation

OF

CHARLESTON, WEST VIRGINIA

RATES, RULES AND REGULATIONS FOR FURNISHING SEWERAGE AND SEWAGE DISPOSAL SERVICE

AT

Charleston, Kanawha County and vicinity, West Virginia

Filed with THE PUBLIC SERVICE COMMISSION

of

WEST VIRGINIA

Issued July 5, 2001 Effective June 18, 2001

Passed by City Council

Issued by City of Charleston, a municipal corporation

By _____
Jay Goldman

Mayor, City of Charleston
Chairman, Charleston Sanitary Board

C0498481.1

Rules and Regulations

I. Rules and Regulations for the Government of Sewerage Utilities adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto, and modifications thereof hereafter made by said Commission.

II. On all premises having a private water supply and connected with the sewer system and works there shall be installed a meter for measuring the amount of water supplied said premises.

III. If for any reason there be no record of the amount of water supplied any month, then the charge shall be based upon the last available monthly meter reading.

IV. Users, the nature and character of whose use is such that the amount of water discharged into the said system is deemed by the Sanitary Board to be substantially less than the amount of metered water supplied the premises, shall be charged for sewer service substantially on the basis of the amount of water discharged into the sewer system, as may be determined according to formulae approved by the Sanitary Board.

V. In apartment buildings, mobile home courts, shopping centers and other places where more than one occupancy unit is served with water through one water meter, the customer shall be required to pay not less than the minimum monthly charge provided in the tariff for each occupancy.

RATES - For Sewage that does not contain industrial waste:

$3.86 per thousand gallons in excess of 2,000 gallons used per month

RATES - For Sewage that contains industrial waste:

Where the character of sewage from any manufacturing or industrial plant, building or premises is such that it imposes a burden upon the sewer system in addition to the burden imposed by the average sewage entering the sewer system, the Sanitary Board may, if it deems advisable to do so, compel the owner, tenant or occupant of such manufacturing or industrial plant, building or premises to treat such sewage in such manner as shall be specified by the Sanitary Board before discharging into the sewer system. In the absence of such treatment sufficient to remove such additional burden, the charges for treatment of such sewage shall be as follows:

Monthly Service Charge	$3,210.00
Volumetric Treatment Charge	$1.750 per thousand gallons
Biochemical Oxygen Demand (BOD) Charge	$0.258 per pound
Total Suspended Solids (TSS) Charge	$0.202 per pound

When an industrial user is to be served, a preliminary study of its waste, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgment of the Sanitary Board, should not be introduced into the sewer system, need not be handled by it. The results of this preliminary study will be used to determine the feasibility of the proposed sewer service.

MINIMUM CHARGE

A charge of $7.05 shall be the minimum for each month or fraction thereof. If, for any reason, there be no record of the amount of water supplied in any month, then the charge shall be based upon the last available monthly meter reading.

RECOVERY OF BANK CHARGES

If a bank or other financial institution returns a customer's check to the Sanitary Board due to insufficient funds in such customer's account and charges a fee to the Sanitary Board for such service, the fee charged will be added to the account of the customer whose check is returned.

PRETREATMENT CHARGE

In addition to all other charges contained herein, all customers who operate under a pretreatment permit will pay an annual charge of $2500.00, payable on July 1 of each year.

DISCONNECT, LIEN, AND RECONNECT FEES

If the Sanitary Board gives notice to a provider of water service to disconnect water service to a customer of the Sanitary Board, the following charges will be added to the account of such customer:

a. A charge of $20.00, plus any legally required certified mail charge, will be added to such customer's account at the time notice to disconnect is given to the water provider.

b. A charge of $4.00 to cover the cost of placing a lien on the property served will be added to the account of such customer at the time such lien is filed in the Office of the Clerk of the County Commission of the County where the property served is located.

c. A reconnect charge of $20.00 will be made at the time the customer pays the amounts due on such customer's account and requests the reconnection of water and sewer service.

NEW SERVICE FEE

A new service fee of $250.00 shall be paid before sewer service can be obtained at any location not previously connected to the collection system of a sewer utility, to be paid for each water meter installed, regardless of the number of sewer connections made at said location.

GREASE TRAP CHARGE

In addition to all other charges contained herein, all customers who are required by the Sanitary Board to install a grease trap shall pay an annual charge of $250.00, payable on July 1 of each year.

(A) SURCHARGES

Customers served from the facilities acquired from the Mt. Tyler Public Service District shall pay, in addition to the foregoing, a monthly surcharge of $2.14 per month until the retirement of bonds issued by said District, as approved by the Public Service Commission of West Virginia in Case No. 98-0215-PSD-S-C.

Customers served from the facilities acquired from the Guthrie Public Service District

shall pay, in addition to the foregoing, a monthly surcharge of $1.75 per thousand gallons until the retirement of bonds issued by said District, as approved by the Public Service Commission of West Virginia in Case No. 00-0152-PSD-PC.

(A) Indicates change in rates

PETITION OF THE SANITARY BOARD
OF
THE CITY OF CHARLESTON, WEST VIRGINIA

TO THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA:

Pursuant to the provisions of Chapter 16, Article 13, Section 5 of the Code of West Virginia, 1931, as amended, the Sanitary Board (the "Sanitary Board") of The City of Charleston, West Virginia (the "City"), hereby petitions the Council of the City (the "Council") to enact an ordinance (the "Ordinance") which shall:

(a) authorize the design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system (the "System") of The City of Charleston set forth in Exhibit A hereto and incorporated herein by reference;

(b) authorize the issuance of not more than $2,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes, Series 2003 A (the "Notes"), to temporarily finance the cost of design and preliminary acquisition of Phase II;

(c) authorize the issuance of the Notes, pursuant to the terms of the proposal attached hereto as Exhibit B and incorporated herein by reference;

(d) authorize the issuance of not to exceed $12,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, Series 2003, in one or more additional series as may be required, of The City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of, or available to, The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction of Phase I and the design of Phase II, to fund reserve accounts for such bonds and to pay other costs in connection therewith; and

(e) contain such other provisions as may be necessary in the premises.

The Sanitary Board respectfully represents to the Council that one of the two persons appointed to the Sanitary Board by the Council is a registered professional engineer.

WITNESS our signatures on this 24th day of April, 2003.

THE SANITARY BOARD OF THE CITY
OF CHARLESTON, WEST VIRGINIA

By: _____
Mayor of the City and
Ex-Officio Chairman

_____
Member

_____
Engineer-Member

EXHIBIT A

DESCRIPTION OF PROJECT

The design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City, consisting of the installation of a new telemetry system on up to 82 pump stations, the upgrades to 4 pump stations, the Phase I improvements to the treatment plant and the preparation of the facilities planning study and the design of the additional treatment plant upgrade and all appurtenant facilities.

Bank One, West Virginia, NA
Charleston
707 Virginia Street East
PO Box 1113
Charleston, WV 25324-1113

tel 304 348 4411
fax 304 348 6903

EXHIBIT B

BANK ONE

April 11, 2003

William Collison, Finance Director
The Sanitary Board of the City of Charleston
208 26th Street
Charleston, W.Va. 25312

Dear Bill,

We are in receipt of your request for proposal to provide a bond anticipation note. In accordance therewith Bank One, West Virginia, NA ("Bank One") is pleased to confirm its willingness to extend the following credit accommodations to you subject to the following terms and conditions (the "Commitment"). This Commitment is based on your representation of intent to use the credit accommodations as described herein.

Borrower:	The Sanitary Board of the City of Charleston
Loan Amount:	Two Million and 00/100 Dollars ($2,000,000.00) (the "Loan")
Type:	Non-Revolving Line of Credit
Use of Proceeds:	Fund engineering and design costs, estimated to be $1,750,000.00, associated with Physical Plant Upgrade Phases I and II together with an additional $250,000.00 reserve for cost overruns and contingencies.
Maturity Date:	Twenty-four (24) months from loan closing date, contingent, however, on compliance with the terms and conditions contained in all Loan Documents. All principal, accrued and unpaid interest together with any other sums due and owing are due in full on the Maturity Date.

Rate of Interest: Interest shall accrue on principal sums advanced under the line of credit Loan and shall be calculated based upon a year of 360 days and paid over a year of 365 days pursuant to the following interest rate options available to the Borrower:

Option I

A tax-exempt non-bank qualified variable interest rate indexed to 65% of the one-month London Interbank Offered Rate ("LIBOR") plus 235 basis points and subject to monthly calculation and adjustment. For purposes of illustration, one-month LIBOR currently approximates 1.30% and, on that basis, the interest rate would be computed as follows:

1.30% x 65% = 0.85% + 2.35% = 3.20% tax-exempt non-bank qualified

Option II

A taxable variable interest rate indexed to one-month London Interbank Offered Rate ("LIBOR") plus 95 basis points and subject to monthly calculation and adjustment. For purposes of illustration, one-month LIBOR currently approximates 1.30% and, on that basis, the interest rate would be computed as follows:

1.30% + 0.95 = 2.25% taxable

Terms of Repayment: Quarterly Loan payments of all accrued interest commencing 90 days after Loan closing and continuing on the same successive day of each quarter thereafter. The outstanding balance of principal, accrued interest and all other sums due hereunder shall be due and payable on the Maturity Date.

Loan Fees: An origination fee of One Thousand and 00/100 Dollars ($1,000.00) shall be due and payable at Loan closing.

Documentation Fees: The Borrower shall be solely responsible for the payment of all

legal fees plus costs and expenses and other documentation fees incurred as a direct or indirect result of the preparation of documentation for this Loan regardless of whether closing shall occur.

Prepayment: The Borrower may at any time, without penalty or premium, prepay the Loan in whole or in part, with all prepayments being first applied to accrued but unpaid interest, then to any fees, and then to installments of principal in the inverse order of their maturity. No partial payment shall operate to postpone the payment of regularly scheduled installments.

Events of Default: Customary, including without limitation non-payment, incorrect or misleading representations, non-compliance with covenants, bankruptcy, failure to provide required and/or requested financial information and breach of term(s) of Loan Documents.

Collateral: Assignment of a first (and only) lien position on proceeds of an $11,697,000.00 credit facility that the Borrower is currently in the process of establishing through the West Virginia State Revolving Fund.

Loan Documents: This proposed Loan shall be evidenced by a loan agreement, promissory note, security agreement, and such other agreements, instruments and documents as Bank One and its counsel may require in their sole and absolute discretion (collectively, the "Loan Documents"). The Loan Documents shall contain such further representations, warranties, covenants, events of default, remedies and general provisions that Bank One and its counsel deem necessary and shall otherwise be satisfactory in form and substance to Bank One and its counsel. The terms, covenants and conditions set forth herein are intended to be an outline of some of the principal provisions of the Loan Documents rather than a full and complete description or exclusive list of all terms, covenants and conditions therein.

Loan Covenants: Affirmative, negative and quantitative covenants as are normal and customary for financings of this type.

Documents Required: Documents required to close shall include but are not limited to articles of incorporation, borrowing resolutions, certificates of incumbency, UCC lien searches, opinions of counsel and loan documents all in form and content acceptable to Bank One and its counsel.

Terms of Commitment As a condition to the effectiveness of this commitment, Borrower affirms that it shall reimburse Bank One for all out-of-pocket costs incurred by Bank One in connection with the Loan, including, without limitation, fees of counsel, lien search charges, and other costs associated with underwriting and documenting the Loan. Such expenses shall be reimbursed by Borrower whether or not the Loan is closed.

Qualifications Of Bidder: Bank One hereby affirms that it meets all required qualifications to bid on Borrower's Request For Proposal dated April, 2003 and, in compliance with the terms stated therein, specifically certifies the following:

- Bank One, West Virginia, NA is a wholly owned subsidiary of Bank One Corporation located at 1 Bank One Plaza, Chicago, Illinois 60670.

- Bank One complies with the requirements of the Equal Employment Opportunity Act and other similar laws of the State of West Virginia and certifies that it does not discriminate against any employee or applicant for employment on the basis of race, religion, color, sex, age, handicap, national origin or any other prohibited basis.

- Bank One complies with the requirements of the Immigration Reform and Control Act.

- Bank One complies with sales, consumer, use, business & occupation taxes imposed by the laws of the State of West

Virginia and ordinances of the City of Charleston.

- Bank One agrees to provide background and experience information of its principal officers and other key employees in writing within three (3) business days of such request by Borrower.

Bank One reserves the right to withdraw this commitment prior to closing as follows:

A. If Bank One determines that a material adverse change has occurred in the financial condition or assets of the Borrower.

B. If Bank One is advised prior to the closing of the Loan of any law or regulation which prevents or prohibits Bank One from making loans in accordance with terms and conditions contained herein or other conditions which, in the judgment of Bank One, have material adverse effect upon the Borrower's profitability or Bank One's ability to make loans and/or this Loan.

C. This commitment presumes the full disclosure and accuracy of all pertinent information submitted by the Borrower to Bank One and may be canceled by Bank One if any such information is false, incomplete or inaccurate in any material respect or if the conditions represented or indicated to exist shall change in any material respect.

The above terms and conditions are intended to be a substantive outline of the transaction documents, which shall contain such representations, warranties, other than a full and complete description of all terms of the loan covenants, events of default and other provisions as Bank One deems necessary. By signing this letter you are authorizing Bank One to begin documenting the Loan transaction.

This written Commitment letter represents the final agreement between the Borrower and Bank One with respect to the Commitment described herein and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. This Commitment letter may not be assigned to, or relied upon by any person or entity not a party to this Commitment.

This Commitment shall be governed by and construed in accordance with the laws of the State of West Virginia and applicable federal laws.

This Commitment shall become effective upon your written acceptance below on or before May 1, 2003 (the "Acceptance Date"). Upon its effectiveness, this Commitment shall remain effective until May 31, 2003 (the "Expiration Date"). The Acceptance Date and the Expiration Date may be extended by the mutual written consent of the parties hereto in order to accommodate the timing of required approvals by the Borrower. Unless Bank One otherwise agrees in writing, this Commitment shall expire on the Expiration Date to the extent the Loan has not been consummated and funding commenced by such date, in which event Bank One shall have no further obligation hereunder.

If the foregoing correctly sets forth our agreement in connection with the Commitment, please so acknowledge by signing and returning this letter to Bank One.

Sincerely,

Bank One, West Virginia, NA

By: _____

Its: Senior Vice President

The terms and conditions of the Commitment are hereby accepted:

Borrower:

The Sanitary Board of the City of Charleston

1 May 03
(Date)

By: _____

Its: Mayor

SECTION V

CHARLESTON SANITARY BOARD
PROPOSAL FORM
24 Month $2,000,000 Bond Anticipation Note
Bid Opening: Monday, April 14, 2003, 10:00AM LPT

Company Name: Bank One, West Virginia, NA
Company Address: 707 Virginia Street, East
Charleston, W.Va. 25324-1113
Telephone No.: (304) 348-4413
Fax No.: (304) 348-6903
Email Address: john_t_copenhaver@bankone.com

The above named company having carefully examined the Contract Documents and being fully informed with regard to the conditions to be met with the proposed equipment and/or items, and having read and examined the Information to Bidders, Detailed Specifications, Bid Proposal Form and any and all Addendums pertaining to this bid, and having had all questions or apparent discrepancies fully resolved, the undersigned proposes to provide and deliver all items specified in the Contract Documents, complete in every detail, all in full compliance and conformity with the Specifications herein now on file at the Sanitary Board of the City of Charleston at 208 26th Street, Charleston, WV 25312, for the following proposal

:

Signature: _____

Title: Senior Vice President

Date: April 11, 2003

Telephone No. (304) 348-4413

Fax No. (304) 348-6903

PROPOSAL IS IN THE FORM OF A COMMITMENT LETTER WHICH IS ATTACHED HERETO

City of Charleston
P.O. Box 2749
Charleston, West Virginia 25330

I, the undersigned City Clerk of Charleston, do hereby certify that the foregoing is a true, correct and complete copy of Bill 6977, enacted by the City Council of the City of Charleston on May 19, 2003.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 5th day of June, 2003.

City Clerk

Seal

Bill No. 6977

Ordinance No._____

Introduced in Council:

May 5, 2003

Referred to:

Finance Committee

Introduced by:

Larry Roller

Passed by Council:

May 19, 2003

A Bill supplementing Ordinance No. 4423 passed by the Council of The City of Charleston, West Virginia, on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6349 passed by the Council on June 2, 1997, by Ordinance No. 6532 passed by the Council on November 16, 1998, by Ordinance No. 6544 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, by Ordinance No. 6777 passed by the Council on March 19, 2001, and by Ordinance No. 6948 passed by the Council on November 4, 2002; authorizing the design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of The City of Charleston; authorizing the issuance of not more than $12,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, Series 2003, in one or more series as may be required, of The City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of, or available to, The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction, to fund reserve accounts for such bonds and to pay other costs in connection therewith; authorizing the issuance of not more than $2,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes, Series 2003 A, to temporarily finance the cost of such design, acquisition and construction; providing for the rights and remedies of and security for the registered owners of such bonds and notes; and adopting other provisions related thereto.

Be It Ordained by the Council of The City of Charleston, West Virginia:

ARTICLE I

STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and other applicable provisions of law, and as a supplement to Ordinance No. 4423 passed by the Council of The City of Charleston (the "Council") on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6349, passed by the Council on June 2, 1997, and by Ordinance No. 6532 passed by the Council on November 16, 1998, by Ordinance No. 6544 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, by Ordinance No. 6777 passed by the Council on March 19, 2001, and by Ordinance No. 6948 passed by the Council on November 4, 2002 (collectively, the "Prior Ordinances").

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

A. The City of Charleston, West Virginia (the "City"), now owns a sewerage system (the "System"), both within and without the corporate limits of the City, consisting of a sewage treatment plant or plants and its collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations and ejector stations and all other appurtenances, extensions, improvements and betterments necessary, appropriate, useful, convenient or incidental for the collection, treatment, purification and disposal in a sanitary manner of liquid and solid waste, sewage and industrial waste.

B. In accordance with Section 2 of the Act, the System is under the supervision and control of the Sanitary Board of the City (the "Sanitary Board").

C. The Sanitary Board has presented a petition to the City for the design, acquisition and construction of certain extensions, additions, betterments and improvements to the System (the "Project") as more fully described on Exhibit A, the enactment of this Ordinance and the issuance of the Sewerage System Revenue Bonds, Series 2003 (the "Series 2003 Bonds") and the Sewerage System Bond Anticipation Notes, Series 2003 A (the "Notes").

D. The estimated maximum cost of design, acquisition and construction of the Project is $12,000,000, which will be permanently obtained from the proceeds of the Series 2003 Bonds herein authorized.

E. The acquisition and construction of the System were financed or refinanced with proceeds of certain obligations of the City, which obligations are designated and have lien positions with respect to the Series 2003 Bonds as follows:

	Designation	Lien Position
1.	$1,912,194 Sewer Revenue Bonds, Series 1989 A, dated March 21, 1989 (the "Series 1989 A Bonds").	First Lien
2.	$829,856 Sewer Revenue Bonds, Series 1989 C, dated November 21, 1989 (the "Series 1989 C Bonds").	First Lien
3.	$773,237 Sewerage System Revenue Bonds, 1993 Series A, dated December 2, 1993 (the "Series 1993 A Bonds").	First Lien
4.	$2,671,058 Sewerage System Revenue Bonds, Series 1996 A, dated October 9, 1996 (the "Series 1996 A Bonds").	First Lien
5.	$395,299 Sewerage System Revenue Bonds, Series 1996 B, dated November 26, 1996 (the "Series 1996 B Bonds").	First Lien
6.	$732,688 Sewerage System Revenue Bonds, Series 1997 A, dated July 22, 1997 (the "Series 1997 A Bonds").	First Lien
7.	$5,237,584 Sewerage System Revenue Bonds, Series 1997 B, dated October 7, 1997 (the "Series 1997 B Bonds").	First Lien
8.	$994,537 Sewerage System Revenue Bonds, 1998 Series A, dated December 10, 1998 (the "Series 1998 A Bonds").	First Lien
9.	$686,229 Sewerage System Revenue Bonds, 1999 Series A, dated June 22, 1999 (the "Series 1999 A Bonds").	First Lien
10.	$1,111,357 Sewerage System Revenue Bonds, Series 2001 A, dated February 22, 2001 (the "Series 2001 A Bonds").	First Lien

11.	$823,741 Sewerage System Revenue Bonds, 2001 Series B, dated May 22, 2001 (the "Series 2001 B Bonds").	First Lien
12.	$1,755,000 Sewerage System Refunding Revenue Bonds, Series 2002 A, dated December 1, 2002 (the "Series 2002 A Bonds")	First Lien
13.	$5,160,000 Sewerage System Refunding Revenue Bonds, Series 2002 B, dated December 1, 2002 (the "Series 2002 B Bonds")	First Lien
14.	$283,458 Supplemental Sewer Revenue Bonds, Series 1989 B, dated March 21, 1989 (the "Series 1989 B Bonds").	Second Lien
15.	$123,015 Supplemental Sewer Revenue Bonds, Series 1989 D, dated November 21, 1989 (the "Series 1989 D Bonds").	Second Lien
16.	$132,072 Sewerage System Revenue Bonds, 1999 Series B, dated June 22, 1999 (the "Series 1999 B Bonds").	Second Lien
17.	$30,492 Sewerage System Revenue Bonds, 2001 Series C, dated May 22, 2001 (the "Series 2001 C Bonds").	Second Lien

The Series 1989 A Bonds, the Series 1989 C Bonds, the Series 1993 A Bonds, the Series 1996 A Bonds, the Series 1996 B Bonds, the Series 1997 A Bonds, the Series 1997 B Bonds, the Series 1998 A Bonds, the Series 1999 A Bonds, the Series 2001 A Bonds, the Series 2001 B Bonds, the Series 2002 A Bonds and the Series 2002 B Bonds are collectively referred to as the "First Lien Bonds." The Series 1989 B Bonds, the Series 1989 D Bonds, the Series 1999 B Bonds and the Series 2001 C Bonds are collectively referred to as the "Second Lien Bonds," which are subordinate and junior to the First Lien Bonds and the Series 2003 Bonds. The First Lien Bonds and the Second Lien Bonds are collectively referred to as the "Prior Bonds."

F. The City derives revenues from the System, and, except for the pledges thereof to secure and pay the Prior Bonds, said revenues are not pledged or encumbered in any manner.

G. It is necessary and essential to design, acquire and construct the Project, generally described on Exhibit A hereto and incorporated herein by reference, in order to preserve the public health, to be financed through the issuance of the Series 2003 Bonds, in

the aggregate principal amount not to exceed $12,000,000. The period of usefulness of the System after completion of the Project is not less than 25 years.

H. The estimated revenues to be derived in each year after the enactment of this Ordinance from the operation of the System will be sufficient to pay all Operating Expenses of the System, the principal of and interest on the Prior Bonds and the Series 2003 Bonds and all funds and accounts and other payments provided for in this Ordinance and the Prior Ordinances.

I. The Series 2003 Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the form set forth in Exhibit B attached hereto and incorporated herein by reference with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the City.

J. All things necessary to make the Series 2003 Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the City according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Series 2003 Bonds, will be timely done and duly performed.

K. The enactment of this Ordinance, and the execution and issuance of the Series 2003 Bonds, subject to the terms thereof, will not result in any breach of, nor constitute a default under, any instrument to which the City is a party or by which it may be bound or affected.

L. The City is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and the System; 95% or more of the Net Proceeds of the Series 2003 Bonds are to be used for local government activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City).

M. It is deemed necessary for the City to issue the Series 2003 Bonds in the aggregate principal amount of not more than $12,000,000, to permanently finance the costs of design, acquisition and construction of the Project and to issue the Notes in the aggregate principal amount of not more than $2,000,000, to temporarily finance such costs. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest on the Series 2003 Bonds prior to and during construction or acquisition and for six months after completion of construction of the Project, if any; engineering, fiscal and legal expenses; expenses for estimates of cost and revenue; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense, any fees or expenses of the Authority or DEP and any defaulted interest thereon, commitment fees, discount, initial fees for the service of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2003 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 the same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the City for any amounts expended by it for allowable costs prior to the issuance of the Series 2003 Bonds or the repayment of the indebtedness incurred by the City for such purposes shall be deemed part of the Cost of the Project.

N. It is in the best interests of the City that its Series 2003 Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreement by and among the Authority, the DEP and the City.

O. Prior to the issuance of the Series 2003 Bonds, the City shall obtain (i) a certificate from an independent certified public accountant stating that the coverage and parity tests of the First Lien Bonds have been met; and (ii) the written consent of the registered owners of the Prior Bonds to the issuance of the Series 2003 Bonds on a parity with the First Lien Bonds and senior and prior to the Second Lien Bonds. The Series 2003 Bonds shall be issued with a lien on the Net Revenues on a parity with the lien held by the registered owners of the First Lien Bonds, but the lien of the Series 2003 Bonds shall be senior and superior to the lien of the registered owners of the Second Lien Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the City which are secured by revenues or assets of the System.

The Notes shall be issued junior and subordinate to the Series 2003 Bonds and the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. The Notes shall be payable solely from and secured by the proceeds of the Series 2003 Bonds.

P. The City has complied with all requirements of West Virginia law and the Loan Agreement relating to the authorization of the design, acquisition, construction and operation of Project and the System and issuance of the Series 2003 Bonds and the Notes, or will have so complied prior to the issuance of any thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity, if required, from the Public Service Commission of West Virginia by final order not subject to appeal or rehearing.

Q. The City will not permit, at any time, any of the proceeds of the Series 2003 Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Series 2003 Bonds from the treatment afforded by Section 103(a) of the Code.

R. The Project has been approved by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended.

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Series 2003 Bonds authorized to be issued hereunder by those who shall

own the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the City and such Registered Owners, and the covenants and agreements herein set forth to be performed by the City shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 2003 Bonds issued hereunder, all of which shall be of equal rank and without preference, priority or distinction between any one Series 2003 Bond and any other Series 2003 Bonds by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. Except as provided below, terms used in this Supplemental Ordinance have the meanings set forth in the Prior Ordinances, as supplemented by this Supplemental Ordinance, unless the context expressly requires otherwise.

"Act" shall mean Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

"Authority" shall mean the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2003 Bonds on behalf of the SRF Program, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

"Bondholder" or "Holder of the Bonds" or "Owner of the Bonds" or "Registered Owner" or any similar term shall mean any person who shall be the Registered Owner of any Outstanding Bond as hereinafter defined.

"Bond Year" shall mean 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.

"City Clerk" shall mean the City Clerk of the City.

"Closing Date" shall mean the date or dates upon which there is an exchange of the Series 2003 Bonds for all or a portion of the proceeds of the Series 2003 Bonds from the Authority.

"Code" shall mean the Internal Revenue Code of 1986, as amended, including the rules and regulations promulgated pursuant thereto or any predecessors or successors thereto.

"Commission" shall mean the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Commission.

"Completion Date" shall mean the completion date of the Project as defined in the SRF Regulations.

"Consulting Engineers" shall mean the firm of consulting engineers set forth in a supplemental resolution, or any engineer or firm of engineers, licensed by the State, which shall at any time hereafter be retained by the City as Consulting Engineers for the System in accordance with Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended.

"Costs of the Project" shall mean those costs described in Section 1.02(M) hereof to be a part of the cost of the acquisition and construction of the Project.

"Council" or "City Council" shall mean the Council of the City.

"DEP" shall mean the West Virginia Department of Environmental Protection or any other agency of the State of West Virginia that succeeds to the function of the DEP.

"Depository Bank" shall mean the bank designated as such in the Supplemental Resolution, as hereinafter defined, and its successors and assigns.

"Fiscal Year" shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

"Fund" shall mean the "West Virginia Water Pollution Control Revolving Fund" established by the State, administered by the DEP and the Authority and funded by capitalization grants awarded to the State pursuant to the federal Clean Water Act, as amended, for the purpose of establishing and maintaining a permanent perpetual fund for the construction, acquisition and improvement of wastewater treatment facilities.

"Independent Accountants" shall mean any firm of certified public accountants which shall be retained by the City as independent accountants for the System.

"Loan Agreement" shall mean the Water Pollution Control Revolving Fund Loan Agreement(s) by and among the Authority, the DEP and the City, providing for the purchase of the Series 2003 Bonds from the City by the Authority, the form of which is attached as Exhibit C hereto and incorporated herein by reference.

"Mayor" shall mean the Mayor of the City.

"Notes" shall mean the Sewerage System Bond Anticipation Notes, Series 2003 A, of the City, authorized by this Ordinance and a resolution supplemental hereto.

"Ordinance" shall mean the Prior Ordinances, as previously defined, as supplemented by this Supplemental Ordinance and as further amended or supplemented. Unless the context clearly requires a different meaning, reference to "this Ordinance" in the Prior Ordinances shall mean the Ordinance.

"Outstanding" when used with reference to Series 2003 Bonds, as of any particular date, describes all such Series 2003 Bonds theretofore and thereupon being authenticated and delivered, except (i) any such Series 2003 Bond canceled by the Registrar, at or prior to said date; (ii) any such Series 2003 Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity of any such Series 2003 Bond, shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any such Series 2003 Bond deemed to have been paid as provided in Section 6.13 hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any such Series 2003 Bond registered to the City.

"Paying Agent" shall mean the West Virginia Municipal Bond Commission.

"Private Business Use" shall mean use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit; provided that, use as a member of the general public shall not be taken into account, all as determined by the Code.

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

"Project" shall mean the extensions, additions, betterments and improvements to the existing sewerage system of the City described in Exhibit A attached hereto.

"Registrar" shall mean the entity named as such in the Supplemental Resolution.

"Regulations" shall mean the regulations promulgated under the Code.

"Reserve Accounts" shall mean, collectively, the respective Reserve Accounts created for the Prior Bonds and the Series 2003 Bonds.

"Series 2003 Bonds" or "Bonds originally authorized hereby" or similar phrases shall mean the Sewerage System Revenue Bonds issued in one or more series for the purpose of paying a portion of the Costs of the Project and for such other purposes permitted hereby and authorized by a resolution supplemental hereto.

"Series 2003 Bonds Construction Trust Fund" shall mean the Series 2003 Bonds Construction Trust Fund created by Section 4.01(C) hereof.

"Series 2003 Bonds Reserve Account" shall mean the Series 2003 Bonds Reserve Account created by Section 4.03 hereof.

"Series 2003 Bonds Reserve Requirement" shall mean, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2003 Bonds in the then current or any succeeding year.

"Series 2003 Bonds Sinking Fund" shall mean the Series 2003 Bonds Sinking Fund created by Section 4.03 hereof.

"Sinking Funds" shall mean, collectively, the respective Sinking Funds created for the Prior Bonds and the Series 2003 Bonds.

"SRF Administrative Fee" shall mean any administrative fee required to be paid pursuant to the Loan Agreement.

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

"State" shall mean the State of West Virginia.

"Supplemental Ordinance" or "this Ordinance" shall mean this ordinance as hereafter amended or supplemented.

"Supplemental Resolution" shall mean any resolution, ordinance or order of the City supplementing or amending this Ordinance and, when preceded by the article "the", refers specifically to the supplemental resolutions authorizing the sale of one or more series of the Series 2003 Bonds or the Notes; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2003 Bonds and the Notes and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" shall mean the Net Revenues not required by the Prior Ordinances and this Ordinance, as supplemented and amended, to be set aside and held in, including but not limited to, any sinking funds, reserve accounts and renewal and replacement funds.

"System" shall mean the complete existing sewerage system now owned by the City and managed by the Sanitary Board, consisting of a sewerage treatment and collection system, and shall include any extensions, additions, betterments and improvements thereto, including the Project, hereafter acquired or constructed for the sewerage system from any sources whatsoever, both within and without the City.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations. Words importing the masculine gender include all other genders.

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

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

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

ARTICLE II

AUTHORIZATION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO SYSTEM

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements. There is hereby authorized and ordered the acquisition and construction of the Project at an estimated cost not to exceed $12,000,000, in accordance with plans and specifications prepared by the Consulting Engineers, approved by the DEP and the City, and on file in the office of the Sanitary Board.

The City has received bids and will enter into contracts for the planning, design, acquisition and construction of the Project which are in an amount and otherwise compatible with the financing plan submitted to the SRF Program.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Bonds. For the purposes of capitalizing interest on the Series 2003 Bonds, if any, funding the Series 2003 Bonds Reserve Account, paying Costs of the Project not otherwise provided for, paying costs of issuance of the Series 2003 Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the Series 2003 Bonds of the City. The Series 2003 Bonds shall be issued in one or more series as set forth in the Supplemental Resolution, designated "Sewerage System Revenue Bonds, Series 2003," in an aggregate principal amount of not more than $12,000,000. The Series 2003 Bonds shall be issued in such principal amounts, shall have the series designation, shall be dated as of the date of delivery thereof, shall bear interest at such rate or rates, not exceeding the then legal maximum rate, and shall mature at such times and in such amounts as shall be set forth in the Schedule Y to the Loan Agreement and in the Supplemental Resolution. The repayment of principal, interest and the SRF Administrative Fee on the Series 2003 Bonds shall be as set forth in the Schedule Y to the Loan Agreement. The Series 2003 Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and the Loan Agreement and as the Council of the City shall prescribe by resolution (or by supplemental or amendatory ordinance of said Council as said Council shall determine) adopted in connection with the sale of such Series 2003 Bonds.

The Series 2003 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 2003 Bonds shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar, provided, that so long as the Authority is the owner thereof, interest on the Series 2003 Bonds may be paid by wire transfer or other methods satisfactory to the City, the Paying Agent and the Authority.

Unless otherwise provided by the Supplemental Resolution, the Series 2003 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, and shall mature in principal installments, all as provided in the Loan Agreement and the Supplemental Resolution. The Series 2003 Bonds shall be exchangeable at the option and expense of the Bondholder for another fully registered Series 2003 Bonds in aggregate principal amount equal to the amount of the Series 2003 Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of the Series 2003 Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds may be issued in fully registered form, in such denominations and shall have such terms as set forth in the Supplemental Resolution.

Section 3.02. Execution of Bonds. The Series 2003 Bonds shall be executed in the name of the City by the Mayor and attested by the City Clerk, and the seal of the City shall be affixed thereto or imprinted thereon. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the City before the Bonds so signed and sealed have been sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the City by such person as, at the actual time of the execution of such Bonds, shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Series 2003 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Exhibit B, shall have been duly manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2003 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 owner, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value in the manner provided hereinafter in the form of said Bonds.

So long as any of the Bonds remain Outstanding, the City, through the Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

Bonds shall be transferable only upon the books of the Registrar, by the Registered Owner thereof in person or by the Registered Owner's attorney duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or the Registered Owner's duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Registrar. For every such exchange or transfer of Bonds, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Registrar incurred in connection therewith, which sum or sums shall be paid by the City. The Registrar shall not be obliged to make any such exchange or transfer of Bonds during the 15 days 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.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2003 Bond shall become mutilated or be destroyed, stolen or lost, the City may, in its discretion, issue and deliver a new Bond in exchange and substitution for such 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 Owner's furnishing the City proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur and the Registrar shall authenticate the new Bond. All Bonds so surrendered shall be canceled by the Registrar and held for the account of the City. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the City may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Bonds be at any time found by anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Bonds not to be Indebtedness of the City. The Series 2003 Bonds shall not, in any event, be or constitute a corporate indebtedness of the City 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 on a parity with the First Lien Bonds but senior and superior to the Second Lien Bonds. No Owner or Owners of any of the Series 2003 Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay the Series 2003 Bonds or any interest thereon.

Section 3.07. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all the Series 2003 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System on a parity with the First Lien Bonds but senior and superior to the Second Lien Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2003 Bonds and the Prior Bonds and to make the payments into the sinking funds and the

reserve accounts therein and in the Renewal and Replacement Fund established herein or in the Prior Ordinances are hereby irrevocably pledged to the payment of the principal of and any interest on the Series 2003 Bonds and the Prior Bonds as the same become due.

Section 3.08. Form of Bonds. The text of the Series 2003 Bonds shall be substantially as set forth in Exhibit B, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof.

Section 3.09. Sale of Bonds; Execution of Loan Agreement. The Series 2003 Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. The Mayor is specifically authorized and directed to execute the Loan Agreement for each series of the Series 2003 Bonds and the City Clerk is directed to affix the seal of the City, attest the same and deliver the Loan Agreement to the Authority and DEP. The Loan Agreement, including all schedules and exhibits attached thereto, attached hereto as Exhibit C and incorporated herein by reference, is hereby approved and ratified and specifically incorporated into this Ordinance.

Section 3.10. Bonds are Issued as Parity Bonds. The Series 2003 Bonds are issued as and shall constitute additional Parity Bonds in accordance with the Prior Ordinances. Prior to the issuance of the Series 2003 Bonds, the following must occur:

A. The City must receive the written consent of the Authority for the issuance of parity bonds.

B. The coverage and parity requirements of the Prior Ordinances must be satisfied.

C. Unless waived in writing by the Authority, the City must enter into written contracts for the immediate design, acquisition or construction of the Project not later than simultaneously with the delivery of the Series 2003 Bonds.

D. The Series 2003 Bonds shall not be issued unless all the payments into the respective funds and accounts provided for in the Prior Ordinances on account of the Prior Bonds and any other payments provided for in the Prior Ordinances, shall have been made in full as required to the date of delivery of the Series 2003 Bonds.

Section 3.11. Filing of Amended Schedule. Within 60 days following the Completion Date, the City will file with the Authority and the DEP, a schedule, the form of which will be provided by the DEP, setting forth the actual costs of the Project and sources of funds used therefor.

ARTICLE IV

APPLICATION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01. Application of Bond Proceeds. From the moneys received from time to time from the sale of the Series 2003 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2003 A Bonds, there shall first be deposited with the Commission in the Series 2003 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

B. Next, from the proceeds of the Series 2003 Bonds, there shall be deposited with the Commission in the Series 2003 Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2003 Bonds Reserve Account.

C. There is hereby created and established with the Depository Bank a special fund, designated the "Series 2003 Bonds Construction Trust Fund". The remaining moneys derived from the sale of the Series 2003 Bonds shall be deposited by the City as received from time to time in the Series 2003 Bonds Construction Trust Fund. Moneys in the Series 2003 Bonds Construction Trust Fund shall be used solely to pay Costs of the Project and until so transferred or expended, are hereby pledged as additional security for the Series 2003 Bonds.

D. After completion of acquisition and construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2003 A Bonds shall be expended as approved by the DEP.

Section 4.02. Disbursements From the Bond Construction Trust Fund. On or before the Closing Date, the City shall have delivered to the DEP and the Authority a report listing the specific purposes for which the proceeds of the Series 2003 Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 4.01 hereof, disbursements from the Series 2003 Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the DEP of the following:

(1) A completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement, in compliance with the construction schedule and

(2) a certificate, signed by the Mayor and the Consulting Engineers, stating that:

(A) None of the items for which the payment is proposed to be made has formed the basis for any disbursements theretofore made;

(B) 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) Each of such costs has been otherwise properly incurred; and

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

Pending such application, moneys in the Series 2003 Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the City.

Section 4.03. Funds and Accounts; Flow of Funds. The funds and accounts established by the Prior Ordinances are hereby continued. In addition to the funds and accounts established by the Prior Ordinances, there are hereby created at the Commission the "Series 2003 Bonds Sinking Fund" and the "Series 2003 Bonds Reserve Account" with respect to the Series 2003A Bonds. Following the monthly payment of Operating Expenses, the City shall make monthly payments to the Commission for the Prior Bonds as required under the Prior Ordinances and the Series 2003 Bonds as follows:

(1) Simultaneously with the interest payments made pursuant to the Prior Ordinances with respect to the First Lien Bonds, the City shall also deposit with the Commission in the Series 2003 Bonds Sinking Fund on the first day of each month, commencing 4 months prior to the first interest payment date of the Series 2003 Bonds, a sum equal to 1/3rd of the amount of interest which will become due on the Series 2003 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 2003 Bonds Sinking Fund and the next quarterly interest payment dated is less that 4 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(2) Simultaneously with the principal payments made pursuant to the Prior Ordinances with respect to the First Lien Bonds, the City shall also deposit with the Commission in the Series 2003 Bonds Sinking Fund on the first day of each month, commencing 4 months prior to the first principal payment date of the Series 2003 Bonds, a sum equal to 1/3rd of the amount of principal which will mature and become due on the Series 2003 Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2003 Bonds Sinking Fund and the next quarterly principal payment dated is less that 4 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(3) Simultaneously with the reserve account payments made pursuant to the Prior Ordinances with respect to the First Lien Bonds, the City shall also deposit with the Commission in the Series 2003 Bonds Reserve Account, if not fully funded upon issuance of the Series 2003 Bonds, on the first day of each month, commencing 4 months prior to the first principal payment date of the Series 2003 Bonds, an amount equal to 1/120th of the Series 2003 Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2003 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 2003 Bonds Reserve Requirement.

(4) The City shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinances and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the City or of the Depository Bank and shall be invested and reinvested in accordance with Section 4.04 hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, or improvements or extensions to the System; provided that, any deficiencies in any Reserve Account, except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof, shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the respective Sinking Funds shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due. Moneys in the respective Reserve Accounts shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due, when other moneys in the respective Sinking Funds are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the respective Reserve Accounts shall be transferred, not less than once each year, to the respective Bond Construction Trust Funds prior to completion of the Project and thereafter, to the respective Sinking Funds.

Any withdrawals from the respective Reserve Accounts which result in a reduction in the balance therein to below the applicable reserve requirement shall be subsequently restored from the first Net Revenues available after all required payments to the respective Sinking Funds for payment of debt service on the Bonds have been made in full.

Moneys in the Sinking Funds and the Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 4.04 hereof.

If, on any monthly payment date, the revenues are insufficient to place the required amount in any of the funds or accounts as provided herein and in the Prior Ordinances, the deficiency shall be made up in subsequent payments, in addition to the

payments which would otherwise be required to be made into the funds and accounts on subsequent payment dates.

Interest, principal or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the First Lien Bonds and the Series 2003 Bonds and thereafter, with respect to the Second Lien Bonds, in accordance with the respective principal amounts then Outstanding.

The City shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payments. The City shall complete the Monthly Payment Form, a form of which is attached to the Loan Agreement, 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. Simultaneously with the payments required above, the City shall remit to the Commission the SRF Administrative Fee as required under the Loan Agreement. Additionally, at such time as required by the Authority and DEP, the City shall make its Debt service payments to the Commission through automatic debit or other electronic bank transfer.

Except as provided above, all sinking fund, reserve account, and renewal and replacement fund payments shall remain as governed by the Prior Ordinances.

The Gross Revenues of the System shall only be used for purposes of the System.

Section 4.04. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank or such other bank or national banking association holding such fund or account, as the case may be, at the direction of the City in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the Prior Ordinances, the need for such moneys for the purposes set forth herein and the specified restrictions and provisions set forth in this Section 4.04.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount. 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 of such liquidation. The Depository Bank or such other bank or national banking association may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the City, at least once each year (or more often if reasonably requested by the City), a summary of such funds, accounts and investment earnings. The City shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2003 Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Series 2003 Bonds from gross income for federal income tax purposes.

ARTICLE V

DEFAULT AND REMEDIES

Section 5.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2003 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 2003 A Bonds; or

(2) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part relating to the Series 2003 A Bonds set forth in this Ordinance, any supplemental resolution or in the Series 2003 A Bonds, and such default shall have continued for a period of 30 days after the City shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Registered Owner of a Bond; or

(3) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 5.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the City to perform its duties under the Act and the Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the City to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2003 A Bonds shall be on a parity with those of the Registered Owners of the First Lien Bonds and senior and prior to those of the Registered Owners of the Second Lien Bonds.

Section 5.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the City under the Ordinance and the Act, including, the completion of the Project and 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 the Series 2003 A 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 City, with the 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 Ordinance and the Act.

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

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Ordinance for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, possession of the System shall be surrendered to the City upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of 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 City and for the joint protection and benefit of the City 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 completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the City 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 Ordinance, and the title to and ownership of the System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE VI

ADDITIONAL COVENANTS OF THE CITY

All the covenants, agreements and provisions of the Prior Ordinances shall remain in full force and effect as long as the Prior Bonds and the Series 2003 Bonds are outstanding and shall apply to the Series 2003 Bonds as if fully set out herein. The following covenants are supplemental and in addition to the covenants set forth in the Prior Ordinances.

Section 6.01. Completion of Project; Permits and Orders. The City shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing enterprise in good condition and in compliance with all federal and state requirements and standards.

The City has obtained all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia and the West Virginia Infrastructure and Jobs Development Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals for the issuance of the Series 2003 Bonds required by state law, with all requisite appeal periods having expired without successful appeal.

Section 6.02. Insurance and Construction Bonds. The City hereby covenants and agrees that so long as the Series 2003 Bonds remain Outstanding, the City 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. The City will 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 the DEP, so long as the Authority is the Owner of the Series 2003 Bonds. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the City, the prime contractor and all subcontractors, as their interests may appear. The City will itself, or will require each contractor and subcontractor to, obtain and 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, to protect the interests of the City, the Authority, the prime contractor and all subcontractors as their interests may appear, in accordance with the Loan Agreement, during construction of the Project in the full insurable value thereof. In time of war, the City shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be disposed of as provided in the Ordinance and otherwise shall be placed in the Renewal and Replacement Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The City will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The City shall carry such other insurance as is required by the Authority and DEP and as set forth in the Loan Agreement,

including but not limited to flood insurance and business interruption insurance, to the extent available at reasonable cost to the City. The City shall verify all such insurance prior to commencement of construction.

The City shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The City shall verify such bonds prior to commencement of construction.

Section 6.03. Issuance of Other Obligations Payable Out of Revenues. The City shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be issued for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

In addition to the limitations on the issuance of parity obligations set forth in the Prior Ordinances, no parity obligations payable out of revenues of the System shall be issued after the issuance of the Series 2003 Bonds without the prior written consent of the Authority and the DEP and without complying with the parity requirements of the Loan Agreement.

Section 6.04. Engineering Services and Operating Personnel. Prior to the issuance of the Series 2003 Bonds, the City shall obtain the certificate of the Consulting Engineers in the form attached to the Loan Agreement stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the DEP and the Authority, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the DEP and the Authority is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and state laws for construction of the Project have been obtained.

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

The City 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 City shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards.

The City shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the Loan Agreement. The City shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

Section 6.05. Compliance With Loan Agreement and Law. The City hereby covenants and agrees to perform, satisfy and comply with all terms, conditions and requirements of the Loan Agreement and 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 construction of the Project and operation, maintenance and use of the System. Notwithstanding anything herein to the contrary, the City will provide the DEP with copies of all documents submitted to the Authority.

Section 6.06. Books: Records and Audit. The City 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 City 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 City 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 Agreement or any state and federal grants or other sources of financing for the Project.

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

The City shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The City will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the System, and any owner of the Series 2003 Bonds issued pursuant to the Ordinance shall have the right at all

reasonable times to inspect the System and all parts thereof and all records, accounts and data of the City relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the City. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other bookkeeping records as prescribed by the City. The City shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the City shall be reported to such agent of the City as the Council shall direct.

The City shall file with the Authority and DEP, and shall mail in each year to any Registered Owner or Owners of Series 2003 Bonds requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses and Net 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 Ordinance and the status of all said funds and accounts.

(C) The amount of any bonds, notes or other obligations Outstanding.

The City shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, and, shall mail upon request, and make available generally, the report of the Independent Accountants, or a summary thereof, to any Registered Owner or Owners of Series 2003 Bonds and shall submit said report to the Authority and the DEP. The report of said audit shall include a statement that the City is in compliance with the terms and provisions of the Act, this Ordinance and the Loan Agreement and that the revenues of the System are adequate to meet its Operating Expenses and Debt service and reserve requirements.

The City shall, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, each month complete a Monthly Financial Report, a form of which is attached to the Loan Agreement and forward a copy to the Authority and the DEP by the 10th day of each month.

The City shall, during construction of the Project, complete Payment Requisition Forms, a form of which is attached to the Loan Agreement and forward a copy to the DEP in compliance with the City's construction schedule.

The City 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 City shall permit the Authority or the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the City 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 6.07. Operating Budget. The City shall annually prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for the operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the DEP within 30 days of the adoption thereof.

Section 6.08. Tax Covenants. The City hereby further covenants and agrees as follows:

A. PUBLIC PURPOSE BONDS. The City shall use the Series 2003 Bond proceeds solely for the Project and as otherwise set forth herein, and the Project will be operated solely for as a public purpose and as local governmental activity of the City.

B. PRIVATE ACTIVITY BOND COVENANT. The City shall not permit at any time or times any of the proceeds of the Series 2003 Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Series 2003 Bonds from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Series 2003 Bonds as "private activity bonds" within the meaning of the Code. The City will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Series 2003 Bonds.

C. PRIVATE LOAN LIMITATION. The City shall assure that not in excess of 5% of the proceeds of the Series 2003 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.

D. FEDERAL GUARANTEE PROHIBITION. The City 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 2003 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

E. INFORMATION RETURN. The City shall file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2003 Bonds, and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

F. FURTHER ACTIONS. The City shall 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 2003 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 deemed necessary by the Authority) which would adversely affect such exclusion.

Section 6.09. Rebate Covenant. The City is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System. As covenanted above, the Series 2003 Bonds are not private activity bonds within the meaning of the Code, and ninety-five percent (95%) or more of the net proceeds (as defined in the Code) of the Series 2003 Bonds will be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City). The City reasonably expects to expend the proceeds of the Series 2003 Bonds within the time period that would provide an exception from the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the City is in fact subject to such rebate requirements, the City hereby covenants to rebate to the United States the amounts required by the Code and to take all steps necessary to make such rebates. In the event the City fails to make such rebates as required, the City shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of interest on the Series 2003 Bonds.

Section 6.10. Arbitrage. The City covenants that (i) it will not take, or permit or suffer to be taken, any action with respect to the proceeds of the Series 2003 Bonds which would cause the Series 2003 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, 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 2003 Bonds) so that the interest on the Series 2003 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 6.11. Tax Certificate and Rebate. The City shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 2003 Bonds. In addition, the City covenants to comply with all Regulations from time to time in effect and applicable to the Series 2003 Bonds as may be necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Series 2003 Bonds and fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of the Ordinance.

If it is determined that the City does not quality for an exception to Section 148 of the Code or the City is otherwise subject to rebate in connection with the Series 2003 Bonds, the City shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the City shall deposit, or cause to be

deposited, with the Depository Bank in a separate fund designated the Rebate Fund, such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder, if any, and used only for payment of rebatable arbitrage to the United States. The City shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the City to be used for any lawful purpose of the System. The City shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the City shall assure that such payments are made by the City to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the City 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 City. The City may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the City may deem appropriate in order to assure compliance with this Section 6.11. The City shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 6.11 in accordance with the requirements of Section 148(f) of the Code. In the event the City fails to make such rebates as required, the City shall pay the required rebate amount and all interest, penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary, in order to maintain the exclusion of interest on the Series 2003 Bonds from gross income for federal income tax purposes.

The City shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation and certificate with respect thereto or, if the City qualifies for the small governmental issue exception to rebate or any other exception therefrom, then the City shall submit to the Authority a certificate stating that it is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series 2003 Bonds subject to rebate. The City shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Series 2003 Bonds (as such term 'gross proceeds" is defined in the Code).

Section 6.12. Securities Laws Compliance. The City will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 6.13. Payment of Bonds. If the City shall pay or there shall otherwise be paid, to the Registered Owners of the Series 2003 Bonds, the principal thereof, and redemption premium, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in the Ordinance, then the pledge of Net Revenues and any other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the City to the Registered Owners shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2003 Bonds from gross income for federal income tax purposes.

Section 6.14. Rates and Charges. The City has obtained any and all approvals of rates and charges required by state law and has taken any other action required to establish and impose such rates and charges , with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the City duly enacted on November 6, 2000, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2003 Bonds are outstanding, the City covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Ordinance and in compliance with the Loan Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2003 Bonds shall prove to be insufficient to produce the required sums set forth in this Ordinance and the Loan Agreement, the City hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Ordinance and the Loan Agreement.

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

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The City 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 City, 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. If the waterworks facilities are not owned by the City, the City will, to the extent allowed by law, use diligent efforts to enter into a 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.

Section 6.15. Contracts; Public Releases. A. The City shall, simultaneously with the delivery of the Series 2003 Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The City shall submit all proposed change orders to the DEP for written approval. The City shall obtain the written approval of the DEP before expending any proceeds of the Series 2003 Bonds held in "contingency" as set forth in the schedule attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the DEP before expending any proceeds of the Series 2003 Bonds made available due to bid or construction or project underruns.

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

ARTICLE VII

AUTHORIZATION OF THE NOTES

Section 7.01. Authorization of the Notes. To provide funds for the design, acquisition and construction of the Project when other funds are temporarily not available therefor, there shall be and hereby are authorized to be issued the Notes of the City. The Notes shall be designated as "Sewerage System Bond Anticipation Notes, Series 2003 A," in an aggregate principal amount of not to exceed $2,000,000. The exact amount and terms of the Notes shall be approved by the Council of the City in a resolution supplemental hereto. The text of the Notes shall be in substantially the form set forth in a resolution supplemental hereto.

Section 7.02. Security for the Notes. The principal of and interest on the Notes shall be payable solely from and secured by the proceeds of the Series 2003 Bonds. The Notes shall not, in any event, be or constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the proceeds of the Series 2003 Bonds. No Owner of the Notes shall ever have the right to compel the exercise of the taxing power of the City to pay the Notes or any interest thereon.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Modification or Amendment. Prior to the issuance of the Series 2003 Bonds, this Ordinance may be amended or supplemented in any way by a Supplemental Resolution. Following issuance of the Series 2003 Bonds, no material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Registered Owners shall be made without the consent in writing of the Registered Owners of the Series 2003 Bonds then Outstanding and to be affected by said modification; provided, however, that no change shall be made in the maturity of any Series 2003 Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the City to pay such principal and interest out of the revenues of the System without the consent of the Registered Owner thereof. No amendment or modification shall be made which would reduce the percentage of the principal amount of Series 2003 Bonds required for consent to the above- permitted amendments or modifications. Notwithstanding the foregoing, this Ordinance may be amended without the consent of any Registered Owner 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 exclusion of interest on the Series 2003 A Bonds from gross income of the Registered Owners thereof.

Section 8.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2003 Bonds.

Section 8.03. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, other than the Prior Ordinances, in conflict with this Ordinance are, to the extent of such conflict, repealed.

Section 8.04. Covenant of Due Procedure. The City covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the final enactment and passage of this Ordinance do exist, have 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, the City Clerk and members of Council and the Sanitary Board 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 8.05. Statutory Notice and Public Hearing. Upon adoption hereof, the abstract of this Ordinance in the form set forth in Exhibit D attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks, with at least 6 full days intervening between each publication, in the Charleston Gazette and

Charleston Daily Mail, 2 qualified newspapers published and of general circulation in The City of Charleston, together with a notice stating that this Ordinance has been adopted and that the City contemplates the issuance of the Series 2003 Bonds, and that any person interested may appear before the Council upon a certain date, not less than 10 days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the City for review by interested persons during office hours of the City. The Council hereby determines that the abstract contains sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Section 8.06. Effective Date. This Ordinance shall take effect immediately following public hearing and final reading hereof.

EXHIBIT A

DESCRIPTION OF PROJECT

The design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City, consisting of the installation of a new telemetry system on 70 pump stations, the upgrades to 2 pump stations, the Phase I improvements to the treatment plant and the preparation of the facilities planning study and the design of the treatment plant upgrade and all appurtenant facilities.

EXHIBIT B

[FORM OF BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF KANAWHA
THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2003

No. AR-__ $_____

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation and political subdivision of the State of West Virginia, in Kanawha County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to 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 City hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing ____, _____, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference, with interest on each installment at the rate of _____ percent (___%) per annum as set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Ordinance) on this Bond shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, ____, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, 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 Paying Agent(as defined in the hereinafter described Ordinance). The interest on this Bond is payable by check or draft mailed to the registered owner hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Ordinance) on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable so long as the Authority is 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 the West Virginia Department of Environmental Protection (the "DEP") and as otherwise provided by the Loan Agreement dated _____, among the Authority, the DEP and the City.

This Bond is issued (i) to pay the costs of design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City (the "Project"); (ii) to fund a reserve account for this Bond; and (iii) to pay certain costs of issuance hereof and related costs. The existing sewerage system of the City, the Project and any further additions, betterments and improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), Ordinance No. 4423 passed by the City on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the City on November 6, 1989, Ordinance No.4954 passed by the City on May 3, 1993, Ordinance No. 6276 passed by the City on September 3, 1996, Ordinance No. 6349 passed by the City on June 2, 1997, Ordinance No. 6532 passed by the City on November 16, 1998, Ordinance No. 6544 passed by the City on February 1, 1999, Ordinance No. 6670 passed by the City on February 5, 2001, Ordinance No. 6777 passed by the City on March 19, 2001, Ordinance No. 6948 passed by the City on November 4, 2002, Ordinance No. _____ passed by the City on _____, 2003, and a Supplemental Resolution adopted by the City on _____, 2003 (collectively, the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Ordinance.

This Bond is issued on a parity with respect to liens, pledge and source of and security for payment with the First Lien Bonds and senior to the Second Lien Bonds, all as defined in the Ordinance.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues as defined in the Ordinance, to be derived from the operation of the System, on a parity with the First Lien Bonds and senior to the Second Lien Bonds, moneys in the Reserve Account created under the Ordinance (the "Series 2003 Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City 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 2003 Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Ordinance, the City 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 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 payable in any year for principal of and interest on this Bond and all obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds; provided however, that so long as there exists in the Series 2003 Bonds Reserve Account an amount equal to the maximum amount of principal and interest

which will become due on this Bond in the then current or any succeeding year and in the respective reserve accounts established for any obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of this Bond for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of this Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of the Registrar, kept for that purpose at the office 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 Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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 and the Ordinance, shall be applied solely to the payment of the costs of the Project and costs of issuance hereof as described in the Ordinance, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

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

All provisions of the Ordinance, 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 CHARLESTON has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its City Clerk, and has caused this Bond to be dated ____, 2003.

[SEAL]

_____
Mayor

ATTEST:

_____
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2003 Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2003.

_____,
as Registrar

By _____
Its Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

Total $_____

EXHIBIT B

DEBT SERVICE SCHEDULE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____
_____
_____
_____
_____
the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said City with full power of substitution in the premises.

Dated: _____, ___.

_____

In the presence of:

_____

EXHIBIT C

SRF-LP-1
(02/03/03)

LOAN AGREEMENT

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

_____
(Local Government)

W I T N E S S E T H:

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I

Definitions

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

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

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

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

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

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

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

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

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

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

1.11 "System" means the wastewater treatment facility owned by the

Local Government, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

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

ARTICLE II

The Project and the System

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

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and the Local Act, the Local Government has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Local Government by the Consulting Engineers.

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

2.4 The Local Government agrees that the Authority and DEP and their respective duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Local Government further agrees that the Authority and DEP and their respective duly authorized agents shall, prior to, during and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and DEP with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Local Government shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Local Government shall permit the Authority and DEP, acting by and through their Directors or duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Local Government shall submit to the Authority and DEP such documents and information as it may reasonably

require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

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

2.7 The Local Government shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Local Government shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and DEP and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Local Government, the Local Government or (at the option of the Local Government) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Local Government, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the 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 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 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 shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall 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 50% 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 acquisition or construction of the Project and for two years following the completion of acquisition or construction 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 DEP and 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 such forms 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 and DEP 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 construction financing, 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") and the West Virginia Infrastructure and Jobs Development Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

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

(h) The Local Government shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), with

all requisite appeal periods having expired without successful appeal, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

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

(j) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority and DEP shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of wastewater treatment projects and satisfactory to the Authority and DEP, to such effect, such certificate to be in form and substance satisfactory to the Authority and DEP, and evidence satisfactory to the Authority and DEP of such irrevocably committed grants.

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

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Government by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, DEP and the Local Government. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing

shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority or such later date as is agreed to in writing by DEP.

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

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

ARTICLE IV

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

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

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

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide Debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve

account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

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

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

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

(b) Covenants substantially as follows:

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

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

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

(iv) That, except as otherwise required by State law or the Regulations, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, provided that the net proceeds to be realized from

such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the Local Bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

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

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

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

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

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

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

(xi) That the Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that the Local Government is in compliance with

the terms and provisions of the Local Act and this Loan Agreement and that the Local Government's revenues are adequate to meet its Operating Expenses and Debt service and reserve requirements;

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

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

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

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

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

(xvii) That the Local Government shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payment. The Local Government shall complete the Monthly Payment Form, attached hereto as Exhibit F and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5th day of such calendar month;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Local Government will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations

under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

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

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

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

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

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

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the DEP monthly as required by the Local Government to pay Costs of the Project, provided, however, if the proceeds of the Local Bonds will be used to repay an interim financing, the proceeds will be advanced on a schedule mutually agreeable to the Local Government, the DEP and the Authority. The Local Bonds shall not bear interest during the construction period but interest shall commence accruing on the completion date

as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Local Bonds shall be as set forth on Schedule Y hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

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

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

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

ARTICLE V

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

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

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this Loan Agreement, the Local Government hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees

and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Loan Agreement.

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

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

ARTICLE VI

Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by the Local Government in the terms and covenants of this Loan Agreement, and the Local Government hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this Loan Agreement.

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

6.3 The Local Government hereby agrees to repay on or prior to the Date of Loan Closing any moneys due and owing by it to the Authority or any other lender

for the planning or design of the Project, provided that such repayment shall not be made from the proceeds of the Loan.

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

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

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

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

ARTICLE VII

Miscellaneous

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

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

7.3 This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which

constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

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

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

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

7.7 This Loan Agreement shall terminate upon the earlier of:

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

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

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

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

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

_____
[Name of Local Government]

(SEAL)

By: _____
Its: _____
Date: _____

Attest:

_____
Its: _____

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

By: _____
Its: Director
Date: _____

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: _____
Its: Director
Date: _____

Attest:

_____
Its: Secretary-Treasurer

EXHIBIT A

FORM OF PERFORMANCE CERTIFICATE

[To Be Provided By DEP]

EXHIBIT B

MONTHLY FINANCIAL REPORT

Name of Local Government _____

Name of Bond Issue(s) _____

Type of Project _____ **Water** _____ **Wastewater**

Fiscal Year _____ **Report Month** _____

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

_____

Name of Person Completing Form

_____

Address

_____

Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

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

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

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

Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are $1,200, then $30 (2.5% of $1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Government.

The Local Government must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.

EXHIBIT C

PAYMENT REQUISITION FORM

(All Copies to Be Provided by DEP for Each Project)

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____
(Issuer)

_____
(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No._____, of _____, Consulting Engineers, _____, _____, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the bond _____ adopted or enacted by the Issuer on _____, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), dated _____.

2. The Bonds are being issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least _____ years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in Schedule A attached hereto as Exhibit A, and my firm[1] has ascertained that all successful bidders have made required provisions for all insurance and payment and

[1]If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____, Esq.] and delete "my firm has ascertained that".

performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof[2], the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this ____ day of _____, ____.

_____

By _____

West Virginia License No. _____

[SEAL]

[2]If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of _____ of even date herewith," at the beginning of (ix).

EXHIBIT E

SPECIAL CONDITIONS

A. PUBLIC RELEASE REQUIREMENT - The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, groundbreaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) - The Local Government that receives $300,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

EXHIBIT F

MONTHLY PAYMENT FORM

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: [Name of bond issue]

Ladies and Gentlemen:

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

Sinking Fund:

Interest	$____
Principal	$____
Total:	$____
Reserve Account:	$____

Witness my signature this ___ day of_____.

[Name of Local Government]

By: _____
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

OPINION OF BOND COUNSEL FOR LOCAL GOVERNMENT

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

Ladies and Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated ____, ____, including all schedules and exhibits attached thereto (the "Loan Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, ____ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of $_____, in the form of one bond, registered as to principal and interest to the Authority, with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning ____ 1, ____, and ending _____ 1, ____, all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond _____ duly adopted or enacted by the Local Government on _____, as supplemented by the supplemental resolution duly adopted by the Local Government on _____ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Local Government and is a valid and binding special obligation of the Local Government, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Local Government without the consent of the Authority and the DEP.

3. The Local Government is a duly organized and validly existing _____ _____, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Local Government and constitute valid and binding obligations of the Local Government, enforceable against the Local Government in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Local Government to the Authority and are valid, legally enforceable and binding special obligations of the Local Government, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds $_____
Purchase Price of Local Bonds $_____

The Local Bonds shall bear no interest from the date of delivery to and including _____. Commencing _____, interest on the Local Bonds is payable quarterly, at a rate of ____% per annum. Commencing _____ _____, principal of the Local Bonds is payable quarterly, with an administrative fee of __%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual Debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Government shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

The Local Bonds are fully registered in the name of the Authority as to principal and interest, if any, and the Local Bonds shall grant the Authority a first lien on the net or gross revenues of the Local Government's system as provided in the Local Act.

The Local Government may prepay the Local Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and DEP. The Local Government shall request approval from the Authority and DEP in writing of any proposed debt which will be issued by the Local Government on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Local Government:

SCHEDULE Y

DEBT SERVICE SCHEDULE

EXHIBIT D

THE CITY OF CHARLESTON, WEST VIRGINIA

NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on _____, 2003, the Council of The City of Charleston, West Virginia (the "City") adopted an ordinance which, among other things:

1. Authorized the design, acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the City's existing sewerage system (the "System"), the temporary financing of such costs thereof through the issuance of not more than $2,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes, Series 2003 A (the "Notes"), and the permanent financing of such costs thereof through the issuance of not more than $12,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, Series 2003 (the "Bonds").

2. Directed that the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution or in the Loan Agreement by and among the City, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "Loan Agreement").

3. Authorized the execution and delivery of the Loan Agreement.

4. Directed the continuation of the Revenue Fund and the disposition of the System revenues; provided for the payment of operating expenses; provided for the monthly payment of principal and interest when due; provided for the creation of a Sinking Fund and a Reserve Account for the Bonds and continuation of the Renewal and Replacement Fund; and provided for the use of excess funds of the System.

5. Directed the creation of a Bond Construction Trust Fund and the disbursement of Bond proceeds.

6. Provided that the Bonds shall not be or constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, but shall be

payable solely from the Net Revenues of the System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the holders of the Bonds to the Net Revenues of the System.

7. Provided certain conditions for the issuance of additional bonds.

8. Provided for insurance coverage on the Project; provided for the enforcement of collection of fees, rates or other charges for the System and other covenants in favor of the Bondholders.

9. Established the events of default and the remedies of the Bondholders.

10. Directed that the Notes be issued in such principal amounts and have such terms as set forth in a supplemental resolution.

11. Provided that the Notes shall not be or constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the proceeds of the Bonds.

12. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The City contemplates the issuance of the 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 Charleston at a _____ meeting on _____, 2003, at _____ p.m., in the Council Chambers, City Hall, Charleston, West Virginia, and present protests and be heard as to whether the above-described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council of City on _____, 2003, is on file with the City Clerk for review by interested persons at the City Hall during regular office hours, to-wit: 8:00 a.m. to 4:00 p.m., Monday through Friday.

/s/_____
City Clerk -- City of Charleston, West Virginia

CERTIFICATE OF TRUTH AND ACCURACY

I, the undersigned, as City Clerk of The City of Charleston, Kanawha County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of the official record of The City of Charleston, such records being in the custody of the undersigned and maintained at The City of Charleston, City Hall, Charleston, Kanawha County, West Virginia, and that the action taken by the Council in the foregoing document remains in full force and effect and has not been amended.

Dated this _____ day of _____, 2003.

_____
City Clerk

[SEAL]

CITY OF CHARLESTON
P.O. BOX 2749
CHARLESTON, WEST VIRGINIA 25330

I, the undersigned City Clerk of Charleston, do hereby certify that the foregoing is a true, correct and complete copy of Resolution 508-04, enacted by the City Council of the City of Charleston on March 15, 2004.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 17th day of March, 2004.

James M. Beckman
City Clerk

Seal

Resolution No. 508-04

Introduced in Council:

March 15, 2004

Adopted by Council:

March 15, 2004

Introduced by: Robert S. Reishman

A resolution supplementing Ordinance No. 6977, which supplemented Ordinance No. 4423 passed by the Council of The City of Charleston, West Virginia, on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6349 passed by the Council on June 2, 1997, by Ordinance No. 6532 passed by the Council on November 16, 1998, by Ordinance No. 6544 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, by Ordinance No. 6777 passed by the Council on March 19, 2001, and by Ordinance No. 6948 passed by the Council on November 4, 2002; authorizing the design, acquisition and construction of certain extensions, additions, betterments and improvements to the sewerage system of The City of Charleston; authorizing the issuance of $9,835,120 in aggregate principal amount of Sewerage System Revenue Bonds, Series 2004 A, of The City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of, or available to, The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction, to a fund reserve account for such bonds and to pay other costs in connection therewith; providing for the rights and remedies of and security for the registered owners of such bonds; and adopting other provisions related thereto.

WHEREAS, the Council (the "Council") of The City of Charleston, West Virginia (the "City"), on May 19, 2003, adopted Ordinance No. 6977, which became effective following a public hearing on June 2, 2003, which Ordinance authorized the issuance of The City of Charleston Sewerage System Revenue Bonds, Series 2003, in an aggregate principal amount not to exceed $12,000,000, to finance the cost of design, acquisition and construction of certain extensions, additions, betterments and improvements to the sewerage system of the City, and all as more fully set out therein (said Ordinance is hereinafter referred to as the "Ordinance");

WHEREAS, the Sewerage System Revenue Bonds, Series 2003, were not issued in 2003, but will be issued in 2004;

WHEREAS, the Council desires to redesignate the Sewerage System Revenue Bonds, Series 2003, as Sewerage System Revenue Bonds, Series 2004 A (the "Bonds");

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Ordinance when used herein;

WHEREAS, the Ordinance provides for the issuance of the Bonds, all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and the terms of the Loan Agreement dated February 25, 2004, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the City, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") and further provides that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of and matters relating to, the Bonds should be established by a supplemental resolution; and

WHEREAS, the Council of the City deems it essential and desirable that this resolution (the "Supplemental Resolution") be adopted, that the Bonds be redesignated, that the Loan Agreement be ratified by the Issuer, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA, 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 redesignated Sewerage System Revenue Bonds, Series 2004 A, as follows:

(A) The Bonds shall be originally represented by a single bond, redesignated "Sewerage System Revenue Bonds, Series 2004 A", numbered AR-1, and shall be issued in the aggregate principal amount of $9,835,120. The Bonds shall be dated the date of delivery thereof, shall finally mature on June 1, 2025, and shall bear interest at the rate of two percent (2%) per annum. The principal of and interest on the Bonds are payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2005, in the amounts as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the Registered Owner of the Bonds. The Bonds shall be subject to the SRF Administrative Fee equal to 1% of the principal amount of the Bonds as set forth in the Schedule Y attached to the Loan Agreement.

(B) The proceeds of the Bonds, along with other funds of the City, shall be deposited, as received from time to time, as follows:

(1) $597,860 shall be deposited into the Series 2004 A Bonds Reserve Account; and

(2) The balance shall be deposited into the Series 2004 A Bonds Construction Trust Fund.

(C) The sale of the Bonds to the Authority is hereby approved. The Mayor is hereby authorized and directed to execute the Bonds by his manual signature and attested by the City Clerk by his manual signature and the seal of the City shall be impressed thereon.

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be as provided in the Ordinance, and the Bonds shall be in substantially the form provided in the Ordinance with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Bonds by the Mayor shall be conclusive evidence of such approval.

Section 3. The City hereby ratifies, approves and accepts the Loan Agreement, including all schedules and exhibits attached thereto, and the execution and delivery of the Loan Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the City, are hereby ratified and approved. The City hereby affirms all covenants and representations made in the Loan Agreement and in the Application to the DEP and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the City.

Section 4. The City hereby appoints and designates United Bank, Inc., Charleston, West Virginia, as the Registrar for the Bonds.

Section 5. The City hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Commission"), as the Paying Agent for the Bonds.

Section 6. The City hereby appoints and designates Bank One, NA, with its principal office in Columbus, Ohio and its service office at 707 Virginia Street, East Charleston, West Virginia, as the Depository Bank under the Ordinance.

Section 7. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds.

Section 8. The City hereby determines to invest all moneys in the funds and accounts established by the Ordinance held by the Depository Bank until expended, in money

market accounts secured by a pledge of Government Obligations, and therefore, the City hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such money market accounts until further directed in writing by the City. Moneys in the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 9. The design, acquisition and construction of the Project and the financing thereof with proceeds of the Bonds are in the public interest, serve a public purpose of the City and will promote the health, welfare and safety of the residents of the City.

Section 10. The City hereby approves and accepts all contracts relating to the financing, design, acquisition and construction of the Project.

Section 11. The City shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code, by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. It will take all actions necessary to comply with the Code, including the Treasury Regulations promulgated thereunder.

Section 12. This Supplemental Resolution shall take effect immediately upon adoption hereof.

CERTIFICATE OF TRUTH AND ACCURACY

I, the undersigned, as City Clerk of The City of Charleston, Kanawha County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of an official record of The City of Charleston, such records being in the custody of the undersigned and maintained at The City of Charleston, City Hall, Charleston, Kanawha County, West Virginia, and that the action taken by the Council in the foregoing document remains in full force and effect and has not been amended or repealed.

Dated this 23rd day of March, 2004.

Karen M. Beckman
City Clerk

[SEAL]

City of Charleston
P.O. Box 2749
Charleston, West Virginia 25330

I, the undersigned City Clerk of Charleston, do hereby certify that the foregoing is a true, correct and complete copy of Minutes for the 5-5-2003 meeting of Council, enacted by the City Council of the City of Charleston on May 5, 2003.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 17th day of March, 2004.

James M. Bushman
City Clerk

Seal

JOURNAL

OF THE

COUNCIL

CITY OF CHARLESTON

WEST VIRGINIA

MAY 5, 2003

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF MAY ON THE 5th DAY, IN THE YEAR 2003, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, JAY GOLDMAN, AT 7:00 P.M. THE INVOCATION WAS DELIVERED BY HENRY KNAUFF, AND THE PLEDGE OF ALLEGIANCE WAS LEAD BY BOY SCOUTS TROOP #34.

THE CLERK CALLED THE ROLL AND THE FOLLOWING MEMBERS ANSWERED TO THEIR NAMES:

CHARNOCK	CRICKENBERGER	DAVIS
FOUTY-YOUNG	HAAS	HARRIS
JONES	KIMBERLING	KNAUFF
LANE	JAMES LANHAM	DAVID LANHAM
LOEB	LOPEZ	MARKHAM
MCKNIGHT	MOLGAARD	MORTON
NIELSEN		PRUNTY
QUICK	REISHMAN	ROLLER
TALKINGTON	WEINTRAUB	MAYOR GOLDMAN

TWENTY-SIX MEMBERS BEING PRESENT, THE MAYOR DECLARED A QUORUM.

PENDING THE READING OF THE JOURNAL OF THE PREVIOUS MEETING, THE READING THEREOF WAS DISPENSED WITH AND THE SAME DULY APPROVED.

MAY 5, 2003, FIRST MEETING

CHARLESTON CITY COUNCIL JOURNAL MAY 5, 2003

PUBLIC SPEAKERS

1. None.

CLAIMS

1. A claim of James Bennett, 1008 Louden Hgts., Charleston WV; alleges damage to property; Refer to City Solicitor.

2. A claim of Mary Dodson, 4314 Noyes Ave., Charleston, WV; alleges damage to property; Refer to City Solicitor.

3. A claim of William Jean, 5405 Venable Ave., SE., Charleston, WV; alleges damage to vehicle;
Refer to City Solicitor.

4. A claim of Mary Ann Bennett, 1529 Quarrier St., Charleston, WV; alleges damage to vehicle; Refer to City Solicitor.

5. A claim of Mary Harless, 1614 Clark Rd., Charleston, WV; alleges damage to property; Refer to City Solicitor.

6. A claim of Irene Zellers, 5306 Noyes Ave., Charleston, WV; alleges damage to property; Refer to City Solicitor.

COMMUNICATIONS

APPOINTMENT

ONE FOLLOWING

The Clerk read the following communication:

TO: **JAMES REISHMAN**
CITY CLERK

FROM: **JAY GOLDMAN**
MAYOR

RE: **CIVIC CENTER BOARD**

DATE: **APRIL 30, 2003**

I am recommending that Harry Bell of 1235 Upper Ridgeway, Charleston, West Virginia, 25314 be appointed to the Civic Center Board to replace William Chambers who has resigned. Said term will expire June 22, 2004.

I respectfully request City Council's approval of this recommendation.

JG/kk

Council approved the appointment.

MISCELLANEOUS RESOLUTIONS

The Clerk read the following resolution introduced by Councilman Howard Quick;

Resolution No. 271-03 , " Appointing a Select Committee of Council to perform certain functions for the Council in the City of Charleston General Election to be held on May 20, 2003."

WHEREAS, the code of West Virginia, 1931 as amended, requires the Council of a municipality to perform certain functions in the conduct of an election; and

WHEREAS, the size of Council makes it impractical to perform these functions as a body, and the West Virginia Secretary of State has directed that such functions be done by committee; NOW THEREFORE,

Be it resolved by the council of the City of Charleston, West Virginia:

That Howard Quick, Chairman, Betty Morton and David Molgaard, members of the Council of the City of Charleston, West Virginia, are hereby appointed as the Select Committee to perform all required functions in connection with the City of Charleston General Election to be held on

the twentieth day of May, two thousand three, including but not limited to a canvass of votes cast.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 271-03, adopted unanimously

FINANCE

Councilman Larry Roller, Chairman of the Council Committee on Finance, submitted the following reports.

Resolution No. 251-03, "Authorizing the Mayor to enter into a contract with J. Wesley Carr, Inc., in the amount of $29,035, for the Ruffner Park restoration Project."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to enter into a contract with J. Wesley Carr, Inc., in the amount of Twenty-nine Thousand Thirty Five Dollars ($29,035), for the Ruffner Park Restoration Project.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez , Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 251-03, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 256-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 256-03, "Authorizing the Mayor to enter into a contract with B.B.R. Drilling Company, in the amount of $200,500, for the Upper Edgewood Drive Retaining Wall Project."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to enter into a contract with B.B.R. Drilling Company, in the amount of Two Hundred Thousand Five Hundred Dollars ($200,500), for the Upper Edgewood Drive Retaining Wall Project.

The question being on the adoption of the Resolution a vote was taken. There being no dissent

the Mayor declared Resolution No. 256-03, adopted unanimously

3. Your Committee on Finance has had under consideration Resolution No. 261-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 261-03, "Authorizing the Mayor to sign Change Order No. 5 with Wiseman Construction Company, in the amount of $18,858. This change order brings the contract price to $1,338,166."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign Change Order No. 5 with Wiseman Construction Company, in the amount of Eighteen Thousand Eight Hundred Fifty-eight dollars ($18,858). This change order brings the contract price to $1,338,166."

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 261-03, adopted unanimously

4. Your Committee on Finance has had under consideration Resolution No. 262-03 and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 262-03, "Authorizing the Finance Director to make B&O Tax Refunds to the following companies:

WV Paving	$234,257.77
Cives Steel Co.	$11,981.31

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized and directed to make B&O Tax Refunds to the following companies:

WV Paving	$234,257.77
Cives Steel Co.	$11,981.31

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 262-03, adopted unanimously

5. Your Committee on Finance has had under consideration Resolution No. 263-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 263-03, "Authorizing the Mayor to sign Change Order No. 1 with Silling Associates, Inc., in the amount of $9,515, for the Civic Center Renovations/Phase II Project Relating to changes in the schematic design of various areas in the building, additional

engineering services, and coordination of additional asbestos abatement uncovered during the construction period."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign Change Order No. 1 with Silling Associates, Inc., in the amount of Nine Thousand Five Hundred Fifteen Dollars $9,515, for the Civic Center Renovations/Phase II Project Relating to changes in the schematic design of various areas in the building, additional engineering services, and coordination of additional asbestos abatement uncovered during the construction period. This change order increases the amount of the contract from $310,544 to $320,059.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 263-03, adopted unanimously

6. Your Committee on Finance has had under consideration Resolution No. 264-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 264-03, "Authorizing the Finance Director to amend the 1997, 1999, 2000, and 2002 Community Development Block Grant Budgets as indicated on the attached list of accounts."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized and directed to amend the 1997, 1999, 2000, and 2002 Community Development Block Grant Budgets as indicated on the attached list of accounts. This is contingent upon no adverse citizen comments being received during the 30-day comments period required through the MOECD Citizen Participation Plan.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez , Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 264-03, adopted.

7. Your Committee on Finance has had under consideration Resolution No. 265-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 265-03, "Authorizing the Mayor to sign and submit to the U.S. Department of

Housing and Urban Development the 2003 Community Development Block Grant Action Plan ands all required agreements, including Subrecipent project contracts relating to the 2003 Program Year."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign and submit to the U.S. Department of Housing and Urban Development the 2003 Community Development Block Grant Action Plan and all required agreements, including Subrecipient project contracts relating to the 2003 Program Year

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez , Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 265-03, adopted.

8. Your Committee on Finance has had under consideration Resolution No. 266-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 266-03, "Authorizing the Finance Director to allocate funds in the amount of $25,325.00 for acquisition of one (1) HOME Project located on the West Side."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized and directed to allocate funds in the amount of Twenty Five Thousand Three Hundred Twenty Five Dollars ($25,325.00) for acquisition of one (1) HOME Project located on the West Side.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez , Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 266-03, adopted.

9. Your Committee on Finance has had under consideration Resolution No. 267-03, and reports

the same to Council with the recommendation that the committee report be adopted.

Resolution No. 267-03, "Authorizing the Mayor to sign a request for project amendment, scope/activity change, for the Spring Hill Apartments Budget Digest Grant No. 00CPGO284 in the amount of $4,000. The original scope for the project funds was to purchase equipment for the Springhill Apartments. The City of Charleston is requesting that the funds be used instead for improvements to the playground on Twilight Drive."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign a request for project amendment, scope/activity change, for the Spring Hill Apartments Budget Digest Grant No. 00CPGO284 in the amount of Four Thousand ($4,000). The original scope for the project funds was to purchase equipment for the Springhill Apartments. The City of Charleston is requesting that the funds be used instead for improvements to the playground on Twilight Drive.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez , Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 267-03, adopted.

10. Your Committee on Finance has had under consideration Resolution No. 268-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 268-03, "Authorizing the sale of a 1989 GMC Water Truck to the City of Ripley for $15,000."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the sale of a 1989 GMC Water Truck to the City of Ripley for Fifteen Thousand Dollars ($15,000) is hereby approved.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 268-03, adopted unanimously

11. Your Committee on Finance has had under consideration Resolution No. 269-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 269-03, "Authorizing the Mayor to sign an application to the West Virginia Division of Criminal Justice Services for a Juvenile Accountability Incentive Block Grant

(JAIBG) in the amount of $29,693 to be used to support programs that allow for the arrest and prosecution of juveniles who commit serious criminal offenses. The grant is for a one year period from July 1, 2003 to June 30, 2004."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign an application to the West Virginia Division of Criminal Justice Services for a Juvenile Accountability Incentive Block Grant (JAIBG) in the amount of Twenty-nine Thousand Six Hundred Ninety-three Dollars ($29,693) to be used to support programs that allow for the arrest and prosecution of juveniles who commit serious criminal offenses. The grant is for a one year period from July 1, 2003 to June 30, 2004."

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 269-03, adopted unanimously

12. Your Committee on Finance has had under consideration Resolution No. 270-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 270-03, "Authorizing the Mayor to sign an application to the West Virginia Division of Criminal Justice Services for a grant from the Drug and Violent Crime Control Program in the amount of $345,624 to be used in the continued operation of the MDENT Drug Task Force through salary and overtime funding. The grant is for a one year period from July 1, 2003 to June 30, 2004."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign an application to the West Virginia Division of Criminal Justice Services for a grant from the Drug and Violent Crime Control Program in the amount of Three Hundred Forty-five Thousand Six Hundred Twenty-four Dollars ($345,624) to be used in the continued operation of the MDENT Drug Task Force through salary and overtime funding. The grant is for a one year period from July 1, 2003 to June 30, 2004.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 270-03, adopted unanimously

13. Your Committee on Finance has had under consideration a payment of an invoice from Carson Associates, Inc., in the amount of $3,867.50, as partial payment for consulting services rendered to develop a Life Safety Evaluation for Festival Seating in the Charleston Civic Center. This invoice covers 65% of the evaluation work and the remaining costs will be approximately $2,100. To be charged to Account No. 402-910-01-000-2-215, Civic Center –Maintenance & Repair, Building & Grounds, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted unanimously.

14. Your Committee on Finance has had under consideration a payment of an invoice from Dinsmore & Shohl, LLP, in the amount of $3,728.50, for professional services rendered during January 2003 regarding general labor and employment advice. To be charged to Account No. 001-417-00-000-2-223, Legal Department –Professional Services, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted unanimously

REPORTS OF OFFICERS

1. Report of the City of Charleston Payroll Variance Analysis; April 2003; Received and Filed.

NEW BILLS INTRODUCED

Introduced by Councilwoman Linda Nielsen, on May 5, 2003:
Bill No. 6975, A Bill to establish a 20 Mile Per Hour speed limit on Wilkie Drive from Cantley Drive to Sheridan Circle and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, Traffic Law, Chapter thirty-one Article three, to conform therewith. **Refer to Council Committee on Streets and Traffic.**

Introduced by Councilman Patrick Jones, on May 5, 2003:
Bill No. 6976, A Bill to establish a Vehicular Parking zone for the exclusive use of the physically disabled on the southerly side of 7th Avenue from a point 392 feet west of 29th Street to a point 436 feet west of 29th street to provide for the removal of vehicles illegally parked in these spaces to incorporate the provisions of the West Virginia State Code, Chapter 17C, Article13, Section 15, and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, Traffic Law, Chapter thirty-one Article three, to conform therewith. **Refer to Council Committee on Streets and Traffic.**

Introduced by Councilman Larry Roller, on May 5, 2003:
Bill No. 6977, a Bill supplementing Ordinance No. 4423 passed by the Council of The City of Charleston, West Virginia, on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4828 passed by the Council on April 20,

1992, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6532 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, and by Ordinance No. 6777 passed by the Council on March 19, 2001; and by Ordinance 6948 passed by Council on November 4, 2002; authorizing the design, acquisition and construction of certain extensions , additions betterments and improvements to the existing sewerage system of the City of Charleston; authorizing the issuance of not more than $12,000,000 in one aggregate principal amount of Sewerage System Revenue Bonds, Series 2003, in one or more series as may be required, of the City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of , or available to , The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction, to fund reserve accounts for such bond and to pay other costs in connection therewith; authorizing the issuance of not more than $2,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes, Series 2003 A, to temporarily finance the cost of such design, acquisition and construction; providing for the rights and remedies of an security for the registered owners of such bonds and notes; and adopting other provisions related thereto.
Refer to the Council Committee on Finance.

UNFINISHED OR MISCELLANEOUS BUSINESS

NONE.

ROLL CALL

The Clerk called the roll and the following members were in attendance:

YEAS: Charnock, Crickenberger, Davis, Haas, Harris, Jones, Knauff, Lane, David Lanham, James Lanham, Lopez , Kimberling, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen , Quick, Reishman, Roller, Talkington, Fouty-Young, Prunty, Weintraub, and Mayor Goldman.
ABSENT: Pettry.

At 7:30 p.m., on motion of Councilman Loeb, Council adjourned until 7:00 p.m., Monday, May 19, 2003.

Jay Goldman, Honorable Mayor

James M. Reishman, City Clerk

CITY OF CHARLESTON
P.O. BOX 2749
CHARLESTON, WEST VIRGINIA 25330

I, the undersigned City Clerk of Charleston, do hereby certify that the foregoing is a true, correct and complete copy of Minutes for the 5-19-2003 meeting of Council, enacted by the City Council of the City of Charleston on May 19, 2003.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 17th day of March, 2004.

City Clerk

Seal

JOURNAL

OF THE

COUNCIL

CITY OF CHARLESTON

WEST VIRGINIA

MAY 19, 2003

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE SECOND MEETING IN THE MONTH OF MAY ON THE 19TH DAY, IN THE YEAR 2003, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, JAY GOLDMAN, AT 7:00 P.M. THE INVOCATION WAS DELIVERED BY BILL KIMBERLING, AND THE PLEDGE OF ALLEGIANCE WAS LEAD BY MARC WEINTRAUB.

THE CLERK CALLED THE ROLL AND THE FOLLOWING MEMBERS ANSWERED TO THEIR NAMES:

CHARNOCK	CRICKENBERGER	DAVIS
FOUTY-YOUNG	HAAS	HARRIS
JONES	KIMBERLING	KNAUFF
LANE	JAMES LANHAM	DAVID LANHAM
LOEB	LOPEZ	MARKHAM
MCKNIGHT	MOLGAARD	MORTON
NIELSEN		PRUNTY
QUICK	REISHMAN	ROLLER
TALKINGTON	WEINTRAUB	MAYOR GOLDMAN

TWENTY-SIX MEMBERS BEING PRESENT, THE MAYOR DECLARED A QUORUM.

PENDING THE READING OF THE JOURNAL OF THE PREVIOUS MEETING, THE READING THEREOF WAS DISPENSED WITH AND THE SAME DULY APPROVED.

MAY 19, 2003, FIRST MEETING

PUBLIC SPEAKERS

1. None.

CLAIMS

1. A claim of Barbara Wilson, 1302 Kanawha St., Hansford WV; alleges personal injury;
Refer to City Solicitor.

2. A claim of Alice E. Terry, 42 Sunset Dr., Charleston, WV; alleges damage to property;
Refer to City Solicitor.

3. A claim of Jeffery H. Hall , 6 Roller Rd.., Charleston, WV; alleges damage to property;
Refer to City Solicitor.

4. A claim of Nadine Sitton, 4709 MacCorkle Ave., Charleston, WV; alleges damage to property;
Refer to City Solicitor.

5. A claim of Cathy L. Hale, P.O. Box 32, Racine, WV; alleges personal injury;
Refer to City Solicitor.

6. A claim of George Robson Jr., 100 Woodbine Farms, Scott Depot, WV; alleges damage to vehicle;
Refer to City Solicitor.

7. A claim of Shelby Talbert, 1417 Cunningham Dr., Charleston, WV; alleges damage to property;
Refer to City Solicitor.

COMMUNICATIONS

PROCLAMATION

ONE FOLLOWING

EXECUTIVE DEPARTMENT

CITY OF CHARLESTON

PROCLAMATION

By the Mayor

WHEREAS: Frank Green and other volunteers were instrumental in encouraging the City of Charleston to make much needed repairs on a road leading to Coal Branch Heights; and

WHEREAS: Frank Green volunteers his time to inspire others and bring people together for a cause; and

WHEREAS: Frank Green serves as a shining example of a community leader, giving those in his community hope in making change; and

WHEREAS: Frank Green shall be recognized for his dedication and commitment to his community and his relentless volunteer spirit.,

NOW THEREFORE: I, Jay Goldman, Mayor of the City of Charleston, do hereby proclaim May 19, 2003 in honor of:

COMMUNITY VOLUNTEER FRANK GREEN

IN WITNESS HEREOF, I have hereunto set my hand and caused the seal of the Executive Department to be affixed this 19th day of May, 2003.

Jay Goldman, Mayor

The Clerk read the following communication:

Honorable J. Crawford Goldman
And Member of Council
Charleston, WV. 25301

Dear Mayor Goldman and Councilmembers:

On May 7, 2003, the Municipal Planning Commission held public hearing and its regular monthly meeting. The following cases were heard by the Commission:

Bill No. 6973- Petition of the Municipal Planning requesting a Bill amending the Zoning Ordinance of the City of Charleston by amending the table of special permitted uses to allow "Re-Use of Structure previously used for non-residential purposes and listed on the National Register of Historic Places" as a special permit use in the R-2, Single Family Residential R-District.

Special Permit #1102- Application of Beverly Panel requesting a Special Permit for a Restaurant/Bar in an Urban Renewal District accessory to the business located at 10 Capitol Street.

Street Naming – Clay Square – Application of Sue Sergi, President/CEO of the Clay Center, requesting that the block bounded by Leon Sullivan Way, street, East Washington Street, East and Brooks Street as One Clay Square.

Street Naming and Dedication of Cornwall Lane and Pembroke Square- Application of Davis Thalheimer for naming and dedication of these two streets in Sherwood Forest.

These cases should be referred to the Planning Committee of Council.

Sincerely,
Municipal Planning Commission

Phyllis White Administrative Assistant.

The Mayor referred the cases to the Planning Committee of Council.

MISCELLANEOUS RESOLUTIONS

Councilman Charlie Loeb, Chairman of the Council Committee on Ordinance and Rules, submitted the following reports.

Bill No.6982, Committee Substitute

Introduced in Council

April 21, 2003

Introduced by

Beth Fouty-Young and Mary Jean Davis

Adopted by Council

Referred to

Streets and Traffic

Bill No. 6982,Committee Substitute a Bill to amend chapter thirty-one of the code of the City of Charleston, one thousand nine hundred twenty-nine, as amended, by adding thereto a new article, designated article seventeen, relating to all-terrain vehicles.

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (1) of the West Virginia Code, as amended, municipal corporations have plenary power and authority to keep and maintain public streets, avenues, roads, alleys, and sidewalks free from obstructions; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (4) of the West Virginia Code, as amended, municipal corporations have plenary powers and authority to regulate the use of streets, avenues, roads, alleys, sidewalks, crosswalks, and public places belonging to the municipality; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (13) of the West Virginia Code, as amended, municipal corporations have plenary powers and authority to prevent injury or annoyance to the public or individuals from anything dangerous, offensive, or unwholesome; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (57) of the West Virginia Code, as amended, municipal corporations have plenary powers and authority to provide penalties for the offenses and violations of law set forth in Chapter 8, Article 12, Section 5 of the West Virginia Code, as amended; and

WHEREAS, the Council of the City of Charleston has determined that, in order to best protect the safety, health, and general well-being of all individuals operating all-terrain vehicles, individuals operating unlicensed motor vehicles, individuals operating other permitted and licensed vehicles, and pedestrians, that the operation and use of all-terrain vehicles or any type of motor vehicle not licensed by the West Virginia Department of Motor Vehicles for street use for transportation or recreational purposes, upon the streets, alleys, sidewalks, parking lots, and any

realty owned, leased or controlled by the City of Charleston, or any of its boards, authorities, or commission's within the corporate limits of the City of Charleston is prohibited, and further that such activity should be criminalized with the imposition of progressive fines against individuals operating, or allowing the operation of all-terrain vehicles or unlicensed motor vehicles in prohibited areas.

Now, Therefore, Be it Ordained by the Council of the City of Charleston, West Virginia: That chapter thirty-one of the code of the City of Charleston, one thousand nine hundred twenty-nine, as amended, be amended by adding thereto a new article, designated article seventeen, to read as follows:

CHAPTER 17. ALL-TERRAIN VEHICLES.

Sec. 17-01. Definitions.

Except as otherwise provided in this chapter the following words and phrases shall have the meanings set forth below:

(a) "All-terrain vehicle" (ATV) means any motor vehicle designed for off-highway use, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control, or as otherwise defined in Section 17A-1-1 of the West Virginia Code, or any successor substitute thereto.

(b) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) "Minor" means any person under the age of 18.

Sec. 17-02. Prohibition of operation and use of all-terrain vehicles.

The riding, operation, or other use of all-terrain vehicles for transportation or recreational purposes within or upon the streets, alleys, sidewalks, parking lots, and other realty-owned, leased, or controlled property by the City of Charleston or any of its boards, authorities, or commissions is prohibited.

Sec. 17-03. Exceptions.

(a) Notwithstanding any other provision of this code, it shall not be an offense for any person to lawfully ride or operate any such all-terrain vehicle upon any governmentally-owned realty not owned or controlled by the City of Charleston or any of its boards, authorities, or commissions located within the corporate limits of the City of Charleston.

(b) Notwithstanding any other provision of this code, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an all-terrain vehicle upon a designated parade route, when such person is a duly registered and recognized participant in any such permitted parade, provided that such all-terrain vehicle riding or operation occurs in conjunction with said parade.

(c) Notwithstanding any other provision of this code, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an all-terrain vehicle on the streets, alleys, sidewalks, parking lots, and other realty-owned, leased, or controlled property by the City of Charleston or any of its boards, authorities, or commissions for purposes of snow removal, if such vehicle is affixed or attached with implements or equipment specifically designed for that purpose, and to be used on such

vehicles.

(d) Notwithstanding any other provision of this code, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an all-terrain vehicle on the streets, alleys, sidewalks, parking lots, and other realty-owned, leased, or controlled property by the City of Charleston or any of its boards, authorities, or commissions during a period of emergency when the emergency has been so declared by the mayor.

Sec. 17-04. Exemptions.

The Federal Government, the State of West Virginia, and its political subdivisions are exempt from the prohibitions contained herein, when any such all-terrain vehicle is used for government purposes.

Sec. 17-05. Authorizing or permitting a minor to violate any provision of this article.

No person shall authorize or knowingly permit a minor to violate any provision within this section. Any such violation or knowingly permitting any such minor to violate the provisions of this section shall constitute a criminal violation hereof and shall subject such person to the criminal penalties set forth in this section. The citing of any person pursuant to this paragraph shall not be reason to prohibit the police officer from also citing the driver of said all-terrain vehicle.

Sec. 17-06. Penalties.

(a) Any person who violates section17-02 of this article shall constitute the commission of a misdemeanor criminal offense, and any officer of the Police Department of the City of Charleston or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of Charleston is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of section 17-02. Any person convicted of a first offense established hereunder shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00). Any person convicted of a second or subsequent offense established hereunder shall be fined not less than two hundred fifty dollars ($250.00).

(b) Any person who violates section17-05 of this article shall constitute the commission of a misdemeanor criminal offense, and any officer of the Police Department of the City of Charleston or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of Charleston is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of section 17-05. Any person convicted of a first offense established hereunder shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00). Any person convicted of a second or subsequent offense established hereunder shall be fined not less than two hundred fifty dollars ($250.00).

Sec. 17-07. Liability.

Nothing contained within this article is intended, nor shall be construed, so as to create or form the basis for any civil or administrative liability whatsoever on the part of the City of Charleston or any of its officers, officials, employees, or agents for any injury or damage resulting to any person as a consequence of any action or inaction on the part of the City of Charleston related, in any manner, to the enforcement or non-enforcement of this article by the City's officers, officials, employees, or agents.

Sec. 17-07. Severability.

The provisions of this article are severable and, in the event that any provision or part hereof shall be held invalid for any reason by any court exercising competent jurisdiction, then such invalidity shall not be deemed to affect or impair any of the other provisions of this section not specifically held to be invalid. It is hereby declared to be the intent of the City of Charleston that this article would have been adopted if any such invalid provision or part hereof had not been included herein.

NOTE: This article is new, thus all underscoring and/or strikethroughs have been omitted.

The Mayor referred Bill No. 6982, Committee Substitute, to the Streets and Traffic Committee.

FINANCE

Councilman Larry Roller, Chairman of the Council Committee on Finance, submitted the following reports.

Resolution No. 272-03, " Authorizing approval of the 2003-2004 Parking System Budget as indicated on the attached list of accounts."

Be it Resolved by the council of the City of Charleston, West Virginia:

That the 2003-2004 Parking System Budget, as indicated on the attached list of accounts, is hereby approved.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez , Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 272-03, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 273-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 273-03, " Authorizing the Mayor to sign Change Order No. 2 with D.C. Byers, in the amount of $25,000, for adding a Texas Two-Step Membrane System on the second floor of Municipal Parking Building No. 1, located at Virginia and Quarrier streets. This change order

increases the contract price for the restoration project form $1,287,414 to 1,312,414."

Be it Resolved by the council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign Change Order No. 2 with D.C. Byers, in the amount of Twenty-five Thousand Dollars $25,000, for adding a Texas Two-Step Membrane System on the second floor of Municipal Parking Building No. 1, located at Virginia and Quarrier streets. This change order increases the contract price for the restoration project form $1,287,414 to 1,312,414.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 273-03, adopted unanimously

3. Your Committee on Finance has had under consideration Resolution No. 274-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 274-03, " Authorizing the Finance Director to make revisions to the 2003-2004 Civic Center budget as indicated on the attached list of accounts."

Be it Resolved by the council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized and directed to make revisions to the 2003-2004 Civic Center budget s indicated on the attached list of accounts; and be it

FURTHER RESOLVED that this budgetary revision is being made prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez , Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 274-03, adopted.

4. Your Committee on Finance has had under consideration Resolution No. 275-03 and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 275-03, " Authorizing the Finance Director to make revisions to the 2002-2003 General Fund budget as indicated on the attached list of accounts."

Be it Resolved by the council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized and directed to make revisions to the 2002-2003 General Fund Budget as indicated on the attached list of accounts; and be it

FURTHER RESOLVED that this budgetary revision is being made prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 275-03, adopted.

5. Your Committee on Finance has had under consideration Resolution No. 276-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 276-03, " Authorizing the Finance Director to make revisions to the 2003-2004 General Fund budget as indicated on the attached list of accounts."

Be it Resolved by the council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized and directed to make revisions to the 2003-2004 General Fund Budget as indicated on the attached list of accounts; and be it

FURTHER RESOLVED that this budgetary revision is being made prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez , Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 276-03, adopted.

6. Your Committee on Finance has had under consideration Resolution No. 277-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 277-03, " Authorizing the Mayor to enter into a Grant Contract Agreement with the Division of Criminal Justice Services to receive and administer grant funds, in the amount of $38,865, pursuant to provisions of the Victim of Crime Act (VOCA) grant Program. The grant provides for the full-time salary of a Victim Services Coordinator in the Charleston Police Department and victim related program materials for direct services to crime victims in the City of Charleston."

Be it Resolved by the council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to enter into a Grant Contract Agreement with the Division of Criminal Justice Services to receive and administer grant funds, in the amount of Thirty-eight Thousand Eight Hundred Sixty-five Dollars ($38,865), pursuant to provisions of the Victim of Crime Act (VOCA) grant Program. The grant provides for the full-time salary of a Victim Services Coordinator in the Charleston Police Department and victim related program materials for direct services to crime victims in the City of Charleston.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 277-03, adopted unanimously

7. Your Committee on Finance has had under consideration Resolution No. 278-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 278-03, " Authorizing the Finance Director to amend the 2002 Community Development Block Grant budget as indicated on the attached list of accounts. This is contingent upon no adverse citizen comments being received during the 30-day comment period required through the MOECD Citizen Participation Plan."

Be it Resolved by the council of the City of Charleston, West Virginia:

That the Finance Director is hereby authorized and directed to amend the 2002 Community Development Block Grant budget as indicated on the attached list of accounts. This is contingent upon no adverse citizen comments being received during the 30-day comment period required through the MOECD Citizen Participation Plan.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez , Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.

ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 278-03, adopted.

8. Your Committee on Finance has had under consideration Resolution No. 279-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 279-03, " Authorizing the Mayor to sign a West Virginia Department of Transportation, Division of Highways (TCSP) grant, and all related documents, for the Charleston Renaissance Gateway Project in the amount of $950,000."

Be it Resolved by the council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign a West Virginia Department of Transportation, Division of Highways (TCSP) grant, and all related documents, for the Charleston Renaissance Gateway Project in the amount of Nine Hundred Fifty Thousand Dollars ($950,000).

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez , Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 279-03, adopted.

9. Your Committee on Finance has had under consideration Resolution No. 280-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 280-03, "Authorizing the Finance Director to allocate funds in the amount of $76,770 for acquisition of three (3) HOME projects."

Be it Resolved by the council of the City of Charleston, West Virginia:

That the Finance director is hereby authorized and directed to allocate funds in the amount of $76,770 for acquisition of three (3) HOME projects as follows:

West Side	$23,600
South Hills area	25,670

Mink Shoals area 27,500

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez , Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 280-03, adopted.

10. Your Committee on Finance has had under consideration Resolution No. 281-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 281-03, "Authorizing the Mayor to sign a Modification to a Consent Decree Order for the City of Charleston and the Sanitary Board as it relates to Civil Action No. 97-C-2279- Taylor V. City of Charleston."

Be it Resolved by the council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign a Modification to a Consent Decree Order for the City of Charleston and the Sanitary Board as it relates to Civil Action No. 97-C-2279- Taylor V. City of Charleston."

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 281-03, adopted unanimously

11. Your Committee on Finance has had under consideration a bid submitted by Taylor and Recreation, in the amount of $11,800, for purchase of a Play Center for the Martin Luther King, Jr. Community Center. To be charged to Account No. 009-002-00-059-0-999, CDBG—P&R Facilities, MLKCC, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the Committee Report a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor

declared the Committee Report, adopted.

12. Your Committee on Finance has had under consideration a Proposal submitted by Family Carpet Outlet, Inc., in the amount of $17,986.41, for purchase of 6,504 square feet of carpet and related materials; and 945 square feet of tile to be installed in the remolded office space at Municipal Parking Building No. 1, located at Virginia and Quarrier streets, for the Engineering and MOECD departments. To be charged to Account No. 425-000-00-000-5-566, Parking System –Contributions to Other Funds, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted unanimously.

13. Your Committee on Finance has had under consideration Bill No. 6972, and reports the same to Council with the recommendation that the recommendation that the Bill do pass.

Bill No. 6972 – Amending the schedule or rates for grave spaces, and for other fees and services provided by the Spring Hill Cemetery Park.

WHEREAS, the Spring Hill Cemetery Park Commission, in accordance with its duties and obligations under Chapter 27 of the City Code has decided to offer additional services at the cemetery and to sell burial related merchandise;

Now, Therefore, Be it Ordained by the Council of the City of Charleston, West Virginia:

That the price for grave spaces and the fees for service at the Spring Hill Cemetery Park shall be as follows:

City Property (Riggs 10-Scruggs; JHL 1-2 Burdette 1-2; Jeffries, all sections 1-10-and Woods 18)	No Spaces Available
Hall & Edmonds and all others	No Spaces Available
H-I-J	No Spaces Available
Lynn-Wehrle	No Spaces Available
Capito	No Spaces Available
Capito Wood Lawn (upon completion of development)	$500.00 & 600.00
Wood Lawn Babyland (upon completion of development)	$200.00
Wilson	No Spaces Available
Middleton	No Spaces Available
Mausoleum Property	No Spaces Available
Woods 1-2	No Spaces Available
Swann Addition (all section of Spring Hill excluding Sec. 49)	No Spaces Available
Section 49	No Spaces Available

Riggs-Jeffries Riggs	No Spaces Available
Riggs Babyland	$100.00
Wilson, Block 6-A, 7-A & 8	$900.00
Wehrle Addition, Section 16	$850.00
Willow Lawn Addition	$700.00
Park Land (when developed)	N/A

The following Table of Service Pricing shall apply:

Standard Adult	Opening/Closing
Weekdays M-F	$600.00
Weekends, Sat. /Sun. (Weekends to include Monday before noon)	$700.00

Baby Graves	Opening/Closing
Weekdays M-F	$200.00
Weekends & Holidays Weekends to include Monday Before noon and holidays)	$250.00

Mausoleum Committal Services Old Mausoleum	N/A

Mausoleum Crypt	Opening/Closing
Weekdays M-F	$300.00
Weekends & Holidays Weekends to include Monday Before noon and holidays	$400.00

The use of an Insuraliner is required for all entombments. (Funeral Homes will be required to supply liners).

Late Fee A late charge of $75.00 per hour shall be charged to funeral homes for arrivals after 3:00 p.m. to cover overtime labor cost.	$75.00 per hour

Installation of Memorials (Except Gov't supplied)	
Flat markers	$0.50 per sq. inch
Upright markers	$0.75 per sq. inch
Government Supplied V.A. Memorials	No Charge

Only granite or bronze on granite markers are allowed.

The installation of mausoleums, columbariums, and Memorials – requiring special needs and equipment for Handling – will be charged according to the individual

Application

Cremation Opening/Closing Weekdays M-F	$300.00
Weekends Sat. /Sun. (Weekends to include Monday before noon)	$400.00
Committal Service Set Up	$150.00

The following Table of Merchandise Pricing shall apply:

Memorials and related merchandise	Cost to cemetery X 2
Burial Containers	Cost to cemetery plus 30% or $100.00 whichever is greater.
The purchase price and charges for other required Services and materials for mausoleums and cremation Depositories are based on individual application	
Flower Location/Setting Service Fee	$3.00 per flower arrangement delivered by outside vendors for placement on a grave. Payable at time of delivery.

State sales tax will apply to services and merchandise as provided by law.

The Clerk of the City of Charleston is hereby directed to publish as a Class I legal advertisement, a schedule of proposed rates for grave spaces and the fees for service at the Spring Hill Cemetery Park along with the time and place of the public hearing, on _____, in Council Chambers, City Hall, at 7:00 pm, during a regular meeting of Council, on the lease and the general terms thereof, pursuant to West Virginia Code § 8-12-18(c).

The question being on the passage of the Bill a roll call was taken and there 26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez , Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6972, adopted

14. Your Committee on Finance has had under consideration Bill No. 6977, and reports the same to Council with the recommendation that the recommendation that the Bill do pass.

Bill No. 6977, a Bill supplementing Ordinance No. 4423 passed by the Council of The City of Charleston, West Virginia, on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4828 passed by the Council on April 20, 1992, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6532 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, and by Ordinance No. 6777 passed by the Council on March 19, 2001; and by Ordinance 6948 passed by Council on November 4, 2002; authorizing the design, acquisition and construction of certain extensions , additions betterments and improvements to the existing sewerage system of the City of Charleston; authorizing the issuance of not more than $12,000,000 in one aggregate principal amount of Sewerage System Revenue Bonds, Series 2003, in one or more series as may be required, of the City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of , or available to , The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction, to fund reserve accounts for such bond and to pay other costs in connection therewith; authorizing the issuance of not more than $2,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes, Series 2003 A, to temporarily finance the cost of such design, acquisition and construction; providing for the rights and remedies of an security for the registered owners of such bonds and notes; and adopting other provisions related thereto.

The question being on the passage of the Bill a roll call was taken and there 25, nays-0, absent-1, abstain-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Lopez , Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.
ABSTAIN: Loeb.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6977, adopted

15. Your Committee on Finance has had under consideration a payment of an invoice from Charleston Newspapers, in the amount of $25,195.06, for publication of the City" Financial Statement in the Charleston Gazette and Charleston Daily main on April 29, 2003. To be charged to Account No. 001-412-00-000-2-220, City Manager—Advertising/Legal Publications, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted unanimously.

16. Your Committee on Finance has had under consideration a Payment of an invoice from

Terradon Corporation, in the amount of $4,100, for consulting services relating to compliance monitoring of Landfill Services of Charleston, Inc. regarding its Landfill contract with the City and West Virginia Department of Environmental Protection's solid waste permit. To be charged to Account No. 039-000-00-000-2-230, Waste Disposal—Contracted Services, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted unanimously.

17. Your Committee on Finance has had under consideration a payment of an invoice from the Kanawha County Commission, in the amount of $19,286.99 for expenditures incurred in the City's Primary Election held on March 11, 2003. To be charged to Account No. 001-438-00-000-2-230, Election Costs—Contracted Services, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted unanimously.

18. Your Committee on Finance has had under consideration a payment of an invoice from Daymark, Inc./Patchwork, in the amount of $4,732.55, for reimbursement of operational expenses during the month of February 2003. To be charged to Account No. 009-002-00-011-0-999, CDBG—Public Services, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the Committee Report a roll call was taken and there were; yeas-25, nays-0, absent-1, abstain- 1, as follows:
YEAS: Charnock, Crickenberger, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSTAIN: Davis.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Committee Report, adopted.

19. Your Committee on Finance has had under consideration a payment of an invoice from Astech Corporation, in the amount of $4,033.73, for demolition of structure at 512 Butler Street consisting of $2,027 square feet at the rate of $1.99/s.f, pursuant to contract approved by Council on April 7, 2003. To be charged to Account No. 009-002-00-033-0-999, CDBG—Demolition/Clearance, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the Committee Report a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff,

Lane, David Lanham, James Lanham, Loeb, Lopez, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Committee Report, adopted.

20. Your Committee on Finance has had under consideration a payment of an invoice from Lowes, in the amount of $11,882.59, for materials and supplies purchased for the Christmas in April project. To be charged to Account No. 009-002-00-014-0-999, CDBG -- Corp Rehabilitation, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the Committee Report a roll call was taken and there were; yeas-26, nays-0, absent-1, as follows:
YEAS: Charnock, Crickenberger, Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, Lane, David Lanham, James Lanham, Loeb, Lopez, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Committee Report, adopted.

21. Your Committee on Finance has had under consideration a payment of an invoice from Dell Marketing, in the amount of $7,700, for the emergency purchase of a Dell Poweredge 4600 Data Server for the Information Systems Department. This is the main server for the City of Charleston and also used as a terminal server. To be charged to Account No. 001-975-00-439-4-459, IS Department –Capital Outlay, Equipment, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted unanimously.

REPORTS OF OFFICERS

1. Report of the City of Charleston, Municipal Court Financial Statements; April 2003.
Received and Filed.

2. City Treasurer's Report to City Council Month Ending April 2003;
Received and Filed.

3. City of Charleston Financial Statements for the Ten- Month Period Ended April 30, 2003;
Received and Filed.

NEW BILLS INTRODUCED

Introduced by Councilwoman Mary Jean Davis, on May 19, 2003:
Bill No. 6978, A Bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 7th day of March 1983, as amended, ant the map made part thereof, by rezoning from a C-4 district to a R-0 district, that certain parcel of land situated at 1003-1011 Oakhurst Drive, Charleston, West Virginia.
Refer to Municipal Planning Commission.

Introduced by Councilman Larry Roller, on May 19, 2003:
Bill No. 6979, a Bill amending and reenacting Chapter Thirty-one, Article Seven, Section Two Hundred Thirteen of the Vehicles and Traffic law of the Code of The City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, amending and supplementing certain parking fees for certain municipal parking facilities.
Refer to Parking Facilities Committee and Finance Committee.

Introduced by Councilwoman Donna Prunty, on May 19, 2003:
Bill No. 6980, A Bill to establish a vehicular parking zone for the excusive use of the physically disabled on the southerly side of Kanawha Ave. form a point 15 feet east of 20th Street to a point 81 feet east of 20th Street on Sunday from 10:00am to 8:00 pm., on Wednesday from 6:00pm to 9:00pm., to provide for the removal of vehicles illegally parked in these spaces to incorporate the provisions of West Virginia Code, Chapter 17C, Article 12, Section 15, and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, Traffic Law, Chapter thirty-one Article three, to conform therewith.
Refer to Council Committee on Streets and Traffic.

Introduced by Councilwoman Betty Morton, on May 19, 2003:
Bill No. 6981, A approving certain modifications of Washington Street, East Renewal Plan for the City of Charleston, West Virginia, with respect to Replacing Section 2.E-Signs.
Refer to the Council Committee on Urban Renewal.

UNFINISHED OR MISCELLANEOUS BUSINESS

NONE.

ROLL CALL

The Clerk called the roll and the following members were in attendance:

YEAS: Charnock, Crickenberger, Davis, Haas, Harris, Jones, Knauff, Lane, David Lanham, James Lanham, Lopez , Kimberling, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen , Quick, Reishman, Roller, Talkington, Fouty-Young, Prunty, Weintraub, and Mayor Goldman.
ABSENT: Pettry.

At 7:35 p.m., on motion of Councilman Loeb, Council adjourned until 7:00 p.m., Monday, June 2, 2003.

Jay Goldman, Honorable Mayor

James M. Reishman, City Clerk

City of Charleston
P.O. Box 2749
Charleston, West Virginia 25330

I, the undersigned City Clerk of Charleston, do hereby certify that the foregoing is a true, correct and complete copy of Council Minutes for June 2, 2003, enacted by the City Council of the City of Charleston on June 2, 2003.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 23rd day of March, 2004.

City Clerk

Seal

JOURNAL

OF THE

COUNCIL

CITY OF CHARLESTON

WEST VIRGINIA

June 2, 2003

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF JUNE ON THE 2nd DAY, IN THE YEAR 2003, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, JAY GOLDMAN, AT 7:00 P.M. THE INVOCATION WAS DELIVERED BY HENRY KNAUFF, AND THE PLEDGE OF ALLEGIANCE WAS LEAD JAMES "MOSE" LANHAM.

THE CLERK CALLED THE ROLL AND THE FOLLOWING MEMBERS ANSWERED TO THEIR NAMES:

		DAVIS
FOUTY-YOUNG	HAAS	HARRIS
JONES	KIMBERLING	KNAUFF
	JAMES LANHAM	DAVID LANHAM
LOEB		MARKHAM
MCKNIGHT	MOLGAARD	MORTON
NIELSEN		PRUNTY
QUICK	REISHMAN	ROLLER
TALKINGTON	WEINTRAUB	MAYOR GOLDMAN

TWENTY-TWO MEMBERS BEING PRESENT, THE MAYOR DECLARED A QUORUM.

PENDING THE READING OF THE JOURNAL OF THE PREVIOUS MEETING, THE READING THEREOF WAS DISPENSED WITH AND THE SAME DULY APPROVED.

JUNE 2, 2003, FIRST MEETING

PUBLIC SPEAKERS

1. None.

CLAIMS

1. A claim of Betty Coleman, 1550 Jackson St., Charleston, WV; alleges damage to property; Refer to City Solicitor.

PUBLIC HEARING

The Mayor Read the Following:

"Pursuant to the provisions of Chapter 16, Article 13, Section 6, of the West Virginia *Code*, and after duly advertised as required by said *Code* provisions, I declare the floor now open for a Public Hearing on Bill No. 6977, an ordinance, authorizing the issuance of not more than $12,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, Series 2003, in one or more series as may be required, along with other funds and moneys of, or available to, The City of Charleston, to permanently finance the cost of the design, acquisition and construction of certain extensions, additions, betterments and improvements to the sewerage system of The City of Charleston.

The Chair sees no one from the public.

The Chair hears no one from the public.

The Chair declares Public Hearing on Bill No. 6977 closed.

PUBLIC HEARING

Pursuant to the provisions of Chapter 8, Article 12, Section 18 of the West Virginia *Code*, and after duly advertised as required by said *Code* provisions, I declare the floor now open for a Public Hearing on Bill No. 6972, a Bill amending the schedule of rates for grave spaces, and for other fees and services provided by the Springhill Cemetery Park.

The Chair sees no one from the public.

The Chair hears no one from the public.

The Chair declares Public Hearing on Bill No. 6972 closed.

COMMUNICATIONS

PROCLAMATION

ONE FOLLOWING

EXECUTIVE DEPARTMENT

CITY OF CHARLESTON

PROCLAMATION

By the Mayor

WHEREAS: The Amelia Earhart Award has existed since 1964, honoring this late advocate and pioneer who set many records for women aviators during aviation's early years; and

WHEREAS: The Amelia Earhart Award represents the third milestone of the Civil Air Patrol program, presented to those who have completed the first 11 of 16 achievements and have received the General Billy Mitchell Award; and

WHEREAS: The Amelia Earhart Award signifies that a Civil Air Patrol Cadet will be promoted to the grade of Cadet Captain, serving as a strong role model for other CAP Cadets; and

WHEREAS: The Amelia Earhart Award is being presented to Cadet Nick Keller, in recognition of his determination and dedication to the CAP Program.

NOW THEREFORE: I, Jay Goldman, Mayor of the City of Charleston, do hereby proclaim June 2, 2003 in honor of:

CADET NICK KELLER, AMELIA EARHART AWARD RECIPIENT

IN WITNESS HEREOF, I have hereunto set my hand and caused the seal of the Executive Department to be affixed this 2nd day of June, 2003.

Jay Goldman, Mayor

MISCELLANEOUS RESOLUTIONS

The Clerk read the following resolution introduced by Councilman Howard Quick;

Resolution No. 293-03 --"Certification of the results of the General Election held for the City of Charleston on the twentieth day of May, two thousand and three."

WHEREAS, a Select Committee for the Council of the City of Charleston was appointed by the adoption of Resolution No. 271-03 at the City Council meeting on the 5th day of May 2003, to act as a Canvassing Board to canvass the votes cast for the respective candidates at the General Election of the City of Charleston on the twentieth day of May, two thousand and three, and make a report to Council of the correct returns ascertained from an inspection of the ballots used in said election and a true count of the challenged ballots; and after completing their canvass; and

WHEREAS, said Select Committee submitted its report to Council with a Certificate of Results attached; **NOW THEREFORE**

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Council of the City of Charleston should and does hereby adopt the results as reflected by said committee report as the official and correct returns and true results of the General Election held for the City of Charleston on the twentieth day of May, two thousand and three.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 293-03, adopted unanimously

PLANNING

Councilwoman Mary Jean Davis, Chairman of the Council Committee on Planning, submitted the following reports.

1. Your Committee on Planning has had under consideration Bill No. 6973, as amended, hereto and made a part hereof,

Your Committee finds the following:

1. It is unlikely that such structures will be developed residentially; therefore, vacancy and non-use would promote deterioration.

2. The proposed text amendment would allow limited commercial re-use of historic structures under strict performance standards.

3. The text amendment offers greater protection and control for the neighborhood rather than rezoning the property to R-O.

The Municipal Planning Commission amended the bill as follows;

Line 40 – by deleting "with the neighboring structures" and inserting "and comply with the Secretary of the Interiors Standard's for Rehabilitation."

and reports the same to Council with the recommendation that the Bill, as amended, do pass.

The question being on the passage of the Bill a roll call was taken and there 22, nays-0, absent-5, as follows:
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Charnock, Crickenberger, Lane, Lopez, and Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6973, as amended, passed.

2. Your Committee on Planning has had under consideration Special Permit #1102, attached hereto and made a part hereof,

Your Committee finds the following:

1. The Charleston Urban Renewal Authority does not object to the request.
2. Due to the commercial nature of the downtown commercial district, there should not be an adverse impact on surrounding land uses.
3. The structure was previously used as a bar.
4. The proposed use as a bar is consistent with other uses in the Central Business District.

The special permit is restricted as follows:

1. Business hours Monday thru Friday shall be 10 a.m. to 2:30 a.m.
2. Business hours Saturdays and Sundays shall be 11 a.m. to 2 a.m.

and reports the same to Council with the recommendation that the Special Permit, as restricted, be approved.

The question being on the approval of the Special Permit a vote was taken. There being no dissent the Mayor declared Special Permit #1102, as restricted, approved.

3. Your Committee on Planning has had under consideration a request for the block bounded by Leon Sullivan Way, Lee Street, East, Washington Street, East and Brooks Street be renamed Clay Square, attached hereto and made a part hereof,

Your Committee finds that this request has been reviewed by all applicable City of Charleston departments and by the U.S. Postal Service. No objections were raised.

and reports the same to Council with the recommendation that the Street Re-naming be accepted.

The question being on the approval of the Street Re-naming a vote was taken. There being no dissent the Mayor declared the Street Re-naming Clay Square accepted.

STREETS AND TRAFFIC

Councilwoman Beth Fouty-Young, Chairman of the Council Committee on Streets and Traffic, submitted the following reports.

1. Your Committee on Streets and Traffic has had under consideration Bill No. 6975, and reports the same to Council with the recommendation that the Bill do pass.

Bill 6975 – A Bill to establish a **20 Mile Per Hour** speed limit on Wilkie Drive from Cantley Drive to Sheridan Circle and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, Traffic Law, Chapter thirty-one, Article three, to conform therewith.

Be it Ordained by the Council of the City of Charleston, West Virginia :

Section 1. A **20 Mile Per Hour** speed limit on Wilkie Drive from Cantley Drive to Sheridan Circle is hereby established.

Section 2. The Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, Traffic Law, Chapter thirty-one, Article three, shall be and hereby are amended, to conform to this Ordinance.

The question being on the passage of the Bill a roll call was taken and there 22, nays-0, absent-5, as follows:
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman,

Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6975, passed.

2. Your Committee on Streets and Traffic has had under consideration Bill No. 6976, and reports the same to Council with the recommendation that the Bill do pass.

Bill No. 6976 – A Bill to establish a **vehicular Parking** zone for the exclusive use of the physically disabled on the southerly side of 7th Avenue from a point 392 feet west of 29th Street to a point 436 feet west of 29th Street to provide for the removal of vehicles illegally parked in these spaces to incorporate the provisions of West Virginia Code, Chapter 17C, Article 13, Section 15, and amending the Traffic Control Map and Traffic Control File, Established by the Code of the City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, Traffic Law, Chapter thirty-one, Article three, to conform therewith.

Be it Ordained by the Council of the City of Charleston, West Virginia :

Section 1. A **vehicular parking** zone for the exclusive use of the physically disabled on the southerly side of 7th Avenue from a point 392 feet west of 29th Street to a point 436 feet west of 29th Street is hereby established.

Section 2. In order for a physically disabled person to utilized the parking spaces provided in the preceding section the vehicle which they are driving or in which they are being transported must display the distinguishing insignia provided for in West Virginia Code, Chapter 17C, Article 13, Section 6.

Section 3. It shall be unlawful for any vehicle not displaying the insignia provided for in Section 2 to park in those spaces for the disabled for in Section 1. any vehicle in violation of this section may be ticketed and impounded as provided in Chapter 31, Vehicles and Traffic Law, Code of the City of Charleston, West Virginia.

Section 4. The Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, Traffic Law, Chapter thirty-one, Article three, shall be and hereby are, amended to conform to this Ordinance.

The question being on the passage of the Bill a roll call was taken and there 22, nays-0, absent-5, as follows:
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6976, passed.

3. Your Committee on Street and Traffic has had under consideration Bill No. 6982, Committee Substitute, and reports the same to Council with the recommendation that the Bill do pass as amended.

Bill No. 6982,Committee Substitute a Bill to amend chapter thirty-one of the code of the City of Charleston, one thousand nine hundred twenty-nine, as amended, by adding thereto a new article, designated article seventeen, relating to all-terrain vehicles.

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (1) of the West Virginia Code, as amended, municipal corporations have plenary power and authority to keep and maintain public streets, avenues, roads, alleys, and sidewalks free from obstructions; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (4) of the West Virginia Code, as amended, municipal corporations have plenary powers and authority to regulate the use of streets, avenues, roads, alleys, sidewalks, crosswalks, and public places belonging to the municipality; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (13) of the West Virginia Code, as amended, municipal corporations have plenary powers and authority to prevent injury or annoyance to the public or individuals from anything dangerous, offensive, or unwholesome; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (57) of the West Virginia Code, as amended, municipal corporations have plenary powers and authority to provide penalties for the offenses and violations of law set forth in Chapter 8, Article 12, Section 5 of the West Virginia Code, as amended; and

WHEREAS, the Council of the City of Charleston has determined that, in order to best protect the safety, health, and general well-being of all individuals operating all-terrain vehicles, individuals operating unlicensed motor vehicles, individuals operating other permitted and licensed vehicles, and pedestrians, that the operation and use of all-terrain vehicles or any type of motor vehicle not licensed by the West Virginia Department of Motor Vehicles for street use for transportation or recreational purposes, upon the streets, alleys, sidewalks, parking lots, and any realty owned, leased or controlled by the City of Charleston, or any of its boards, authorities, or commission's within the corporate limits of the City of Charleston is prohibited, and further that such activity should be criminalized with the imposition of progressive fines against individuals operating, or allowing the operation of all-terrain vehicles or unlicensed motor vehicles in prohibited areas.

Now, Therefore, Be it Ordained by the Council of the City of Charleston, West Virginia:
That chapter thirty-one of the code of the City of Charleston, one thousand nine hundred twenty-nine, as amended, be amended by adding thereto a new article, designated article seventeen, to

read as follows:

CHAPTER 17. ALL-TERRAIN VEHICLES.

Sec. 17-01. Definitions.

Except as otherwise provided in this chapter the following words and phrases shall have the meanings set forth below:

(a) "All-terrain vehicle" (ATV) means any motor vehicle designed for off-highway use, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control, or as otherwise defined in Section 17A-1-1 of the West Virginia Code, or any successor substitute thereto.

(b) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) "Minor" means any person under the age of 18.

Sec. 17-02. Prohibition of operation and use of all-terrain vehicles.

The riding, operation, or other use of all-terrain vehicles for transportation or recreational purposes within or upon the streets, alleys, sidewalks, parking lots, and other realty-owned, leased, or controlled property by the City of Charleston or any of its boards, authorities, or commissions is prohibited.

Sec. 17-03. Exceptions.

(a) Notwithstanding any other provision of this code, it shall not be an offense for any person to lawfully ride or operate any such all-terrain vehicle upon any governmentally-owned realty not owned or controlled by the City of Charleston or any of its boards, authorities, or commissions located within the corporate limits of the City of Charleston.

(b) Notwithstanding any other provision of this code, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an all-terrain vehicle upon a designated parade route, when such person is a duly registered and recognized participant in any such permitted parade, provided that such all-terrain vehicle riding or operation occurs in conjunction with said parade.

(c) Notwithstanding any other provision of this code, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an all-terrain vehicle on the streets, alleys, sidewalks, parking lots, and other realty-owned, leased, or controlled property by the City of Charleston or any of its boards, authorities, or commissions for purposes of snow removal, if such vehicle is affixed or attached with implements or equipment specifically designed for that purpose, and to be used on such vehicles.

(d) Notwithstanding any other provision of this code, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an all-terrain vehicle on the streets, alleys, sidewalks, parking lots, and other realty-owned, leased, or controlled property by the City of Charleston or any of its boards, authorities, or commissions during a period of emergency when the emergency has been so declared by the mayor, and when such riding, operating or other use of any such ATV is in conjunction with response to such an emergency.

Sec. 17-04. Exemptions.

The Federal Government, the State of West Virginia, and its political subdivisions are exempt from the prohibitions contained herein, when any such all-terrain vehicle is used for government purposes.

Sec. 17-05. Authorizing or permitting a minor to violate any provision of this article.

No person shall authorize or knowingly permit a minor to violate any provision within this section. Any such violation or knowingly permitting any such minor to violate the provisions of this section shall constitute a criminal violation hereof and shall subject such person to the criminal penalties set forth in this section. The citing of any person pursuant to this paragraph shall not be reason to prohibit the police officer from also citing the driver of said all-terrain vehicle.

Sec. 17-06. Penalties.

(a) Any person who violates section17-02 of this article shall constitute the commission of a misdemeanor criminal offense, and any officer of the Police Department of the City of Charleston or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of Charleston is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of section 17-02. Any person convicted of a first offense established hereunder shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00). Any person convicted of a second or subsequent offense established hereunder shall be fined not less than two hundred fifty dollars ($250.00).

(b) Any person who violates section17-05 of this article shall constitute the commission of a misdemeanor criminal offense, and any officer of the Police Department of the City of Charleston or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of Charleston is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of section 17-05. Any person convicted of a first offense established hereunder shall be fined not less than twenty-five dollars ($25.00) or more than one hundred dollars ($100.00). Any person convicted of a second or subsequent offense established hereunder shall be fined not less than two hundred fifty dollars ($250.00).

The question being on the passage of the Bill a roll call was taken and there 22, nays-0, absent-5, as follows:
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6982, Committee Substitute, as amended, passed.

ORDINANCE AND RULES

Councilman Charlie Loeb, Chairman of the Council Committee on Ordinance and Rules, submitted the following reports.

1. Your Committee on Ordinance and Rules has had under consideration Bill No. 6915, and reports the same to Council with the recommendation that the Bill do pass.

Bill No. 6915 – A Bill amending and re-enacting the City of Charleston drug and Alcohol Testing Policy to give authority and discretion to the Director of Human Resources, upon approval from the City Manager, to determine which employee positions qualify as "covered employees" and thus subject to testing.

Be it Ordained by the Council of the City of Charleston, West Virginia :

That the council for the City of Charleston hereby amends and reenacts the City of Charleston Drug and Alcohol Testing Policy, by adding section 2.3, as follows:

SECTION 2. COVERED EMPLOYEES

2.3 DETERMINATION OF EMPLOYEES COVERED – The Director of Human Resources, upon approval from the City Manager, Will have the authority and discretion to determine which employee positions qualify as "covered employees", under the definitions and mandated of the policy, In the event the Director of Human Resources, with the approval from the City Manager, in his/her discretion, determines that a position must be added or deleted from the original "covered employees" list, attached as "Addendum A" hereto, he/she shall make such change, in writing, and post it in a location visible to all employees and notify the head of the department where said position is employed.

This bill will become effective immediately.

The question being on the passage of the Bill a roll call was taken and there are 22, nays-0, absent-5, as follows:
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6915, passed.

2. Your Committee on Ordinance and Rules has had under consideration Bill No. 6974, and reports the same to Council with the recommendation that the Bill do pass.

Ordinance No. 6974 A Bill to amend and re-enact Sec. 28, Article VI. Trees, of the City Code of the City of Charleston.

Be it Ordained by the Council of the City of Charleston, West Virginia:

That the Council for the City of Charleston hereby amends and re-enacts Sec. 28, Article VI. Trees, of the City Code as follows:

Article VI. Trees

Sec. 28-45. Short Title.

This ordinance shall be known and may be cited as the Tree Ordinance of the City of Charleston, West Virginia.

Sec. 28.46. Purpose.

It is the purpose of this Ordinance to promote and protect the public health and general welfare by providing for the regulations of the planting, maintenance, preservation and removal of trees within the City of Charleston.

Sec. 28-47. Definitions.

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural.

1. Municipality is the City of Charleston, West Virginia.

2. Tree Board is a commission consisting of the members of the Municipal Beautification Commission.

3. City Arborist is the Director of Public Grounds, who shall administer the provisions of this ordinance in consultation with the consulting horticulturist.

4. Person is any person, firm, partnership, association, corporation, limited liability company, or other entity or organization of any kind.

5. Street or Highway_ means the entire width of every public way or right-of-way when
any part hereof is open to the use of the public as a matter of right, for the purpose of vehicular and pedestrian traffic, and extending from property line to property line.

6. Park shall include all public parks, the ownership and control of which are vested in the City of Charleston.

7. Public Property shall include all grounds owned by, or under the control of, the City of Charleston.

8. Public Trees are all shade and ornamental trees now or hereafter growing on any street or any public right-of-way or on any other public property.

9. Property Owner shall mean the person(s) owning designated property as shown by the County Assessor's Plat of Kanawha County.

10. Remove shall mean the cutting down or damaging, whether by deliberate or negligent act or any act which causes the tree to die within three years.

11. Tree shall mean:

a. Any self-supporting woody plant which has a well defined stem with a diameter of at least two inches at 4.5 feet from the ground;

b. Any ornamental woody plant as designated by the City Arborist; or

c. Any small seedling or sapling planted or protected specifically to become a large tree as described in (a) and (b) above.

12. Urban Forest shall mean all trees located on city-owned or controlled property.

13. Urban Tree Specifications and Standards of Practice shall be regulations promulgated by the Tree Board and adopted by the Charleston City Council to regulate or deal with the Urban Forest. Such regulations shall conform with the current American National Standards For Tree Care Operations and the American Standards for Nursery Stock as approved by the American National Standards Institute, Inc.

14. Consulting Horticulturist is that person under contract with the City of Charleston to provide horticultural information on an hourly basis to the Municipal Beautification Commission and to various department and divisions of City government.

Sec. 28-48. Establishment of a Tree Board.

a. There is hereby created a Tree Board consisting of the members of the Municipal Beautification Commission of the City of Charleston.

b. Any public utility company and any cable television company whose right-of-way maintenance practices and activities may be affected by this ordinance and/or regulations promulgated there under may appoint an ex-officio member to serve in an advisory capacity.

c. The officers of the Municipal Beautification Commission shall serve as officers of the Tree Board.

d. The Tree Board shall, in cooperation with the City Arborist, prepare and adopt the Urban Tree Specifications and Standards of Practice and submit such rules to the Charleston City Council for its approval, and may also recommend modifications to such rules as it may from time to time deem necessary and advisable.

Sec. 28-49. Duties of City Arborist.

The City Arborist shall:

a. assist in the administration and enforcement of this Ordinance;

b. recommend new or modified rules and regulations governing the planting, cataloguing, maintaining, removing, fertilizing, spraying, pruning, and bracing of public trees, emergency procedures, stump removal, the use of insecticides, fungicides, and herbicides, and the sale/disposal of wood products on the streets or any other public property;

c. oversees the planting, cataloguing, maintenance and removal of trees growing now or hereafter planted on any public property;

d. work in consultation with the Tree Board;

e. supervise or inspect all work done under a permit issued in accordance with the terms of this ordinance; and

f. provide an annual report to the Tree Board which will include a list of the plantings and removals during the previous twelve months.

Sec. 28-50. Permits Required.

a. Except as provided in Section 28-60, no person shall commence or proceed with any operation involving a public tree without first obtaining a Public Tree Work Permit from the City. Activities covered by this section include, but are not limited to, planting, fertilizing, spraying, protecting, pruning, removing, cutting above ground, cutting below ground, or otherwise disturbing a public tree.

b. Application for a Public Tree Work Permit shall be made in the form prescribed by the City by: the abutting property owner, or such owner's agent, if the work is to be performed within the street right of way on behalf of the abutting property owner. All work shall be done at the property owner's expense, and the property owner shall be liable for personal injury or property damage caused by such work, and hold harmless and indemnify the City of Charleston, its officers, agents and employees, from liability and damages, including attorney fees, caused by the existence of the Tree Permit or the work performed there under.

c. Any agency of the City doing work involving public trees need not obtain a permit under this section, but shall cooperate with the City Arborist and shall otherwise comply with the

Urban Tree Specifications and Standards of Practice to the extent possible.

d. Application for permits shall be made at the office of the Director of Public Grounds not less than 48 hours in advance of the time the work is to be done.

e. The Director of Public Grounds shall cause the permit to be issued if the Director determines, based on his review of the application for the permit, that the proposed work is consistent with the purpose of this Ordinance and complies with the Urban Tree Specifications and Standards of Practice. Any permit granted shall contain a definite date of expiration and the work shall be completed in the time allowed on the permit, and in the manner as therein described. Provided, that said expiration date and time limit for completion may be extended if said work is not completed therein due to weather conditions or other unforeseen or uncontrollable circumstances. Any permit may be revoked if its terms are violated. Notice of completion shall be given within five days to the Director of Public Grounds for his inspection.

f. Any decision by the Director of Public Grounds to deny the issuance of a Public Tree Work Permit may be appealed to the Charleston Municipal Beautification Commission by written notice to the Commission, who shall review such decision at its next scheduled meeting following receipt of such written notice.

Sec. 28-51. Application Data.

a. Planting. The application required herein shall state the number of trees to be planted; the location, grade, size, species, cultivar or variety of each tree, the method of planting, and such other information as is reasonably necessary for a fair determination of whether a permit should be issued.

b. Maintenance. The application required herein shall state the number and kinds of trees to be sprayed, fertilized, pruned or otherwise protected (except in the case of an application for a blanket permit); the kind of treatment to be administered; the composition of the spray material to be applied; and such other information as shall be reasonably necessary for a fair determination of whether a permit should be issued. All pruning shall comply with the Urban Tree Specifications and Standards of Practice.

Sec. 28-52. Removal, Replanting, and Replacement.

a. Whenever it is necessary to remove a public tree or trees in connection with the paving of a sidewalk, or the paving or widening of the portion of a street or highway used for vehicular traffic, the City may replant such trees or replace them, if feasible.

b. Except as provided in a permit, no person or property owner shall remove a public tree for the purpose of construction, or for any other reason, without replacing the removed tree or trees. Such replacement shall meet the standards of size, species, and placement as provided for in a permit issued by the City. The person or property owner shall bear the cost of removal and replacement of all public trees so removed and replaced.

c. Whenever any tree shall be planted or transplanted on public property in conflict with the provisions of this ordinance, it shall be lawful for the City to remove or cause removal of the same, and the exact cost thereof may be assessed to and paid by the person responsible for the improper planting of such tree.

Section. 28-53. Interference with City Arborist.

No person shall hinder, prevent, delay or interfere with the City in carrying out the execution or enforcement of this ordinance; provided, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the municipality.

Sec. 28-54. Placing Materials on Public Property.

From and after the date of adoption of this ordinance by the City Council, no person shall deposit, place, store or maintain upon any public property any stone, brick, sand, concrete or other materials which may impede the free passage of water, air and fertilizer to the roots of any tree growing therein, except by written permit of the City.

Sec. 28-55. Abuse or Mutilation of Public Trees.

Unless specifically authorized by the City, no person shall damage, cut, carve, transplant or remove any public tree; attach any rope, wire, nails, advertising posters or other contrivance to any public tree, allow any gaseous liquid or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or heat hereof will injure any portion of said tree.

Sec. 28-56. Emergencies.

a. No permit shall be required to remove any public tree or part thereof which by reason of damage by fire, windstorm, ice storm or other calamity poses a threat to the public health and safety or which obstructs any public way, or has contributed to loss of utility service.

b. The City may determine that a public tree is hazardous and order that it be treated or removed immediately to protect the public health or safety. A tree obstructing any public way shall be removed or treated immediately.

Sec. 28-57. Violation and Penalty.

a. Any person, firm or corporation violating or failing to comply with any of the provisions of this Article 6, Chapter 28, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in the sum of not more than five hundred dollars, or imprisoned for not more than thirty days, or by both fine and imprisonment. In addition to criminal penalties, the City may seek restitution for any destroyed or damaged tree.

b. In additional to the remedies set forth in subsection (a) above, because of the uniqueness of each public tree and the irreparable harm to the public health and general welfare which may be caused by the destruction or damage to a public tree, the City shall be entitled to enjoin any person or entity who seeks to destroy or damage any public tree, who is the in the process of destroying or damaging a public tree.

Sec. 28-58. Severability.

If any section or part of this article or the application thereof be held to be unconstitutional and invalid, such unconstitutionality or invalidity shall not affect any other section or provision hereof, and to this end each and every provision and phrase of this article is declared to be severable.

Sec. 28-59. Repealer.

Any ordinance, statute or municipal regulations heretofore adopted and otherwise not incorporated into this ordinance which in any manner conflicts with any provision of this ordinance are hereby repealed to the extent of such conflict.

Sec. 28-60. Public Utility Right-of-Way Maintenance.

a. Any other provision of this Article 6, Chapter 28 notwithstanding, a public utility, or any agent acting on behalf of a public utility to maintain the public utility's rights-of-way within the City, need not obtain a permit under this Chapter 28 in order to maintain its rights-of-way within the City, but shall instead comply with the provisions of this Section.

b. Any pubic utility, or any agent acting on behalf of a public utility to maintain the public utility's rights-of-way within the City, which plans to maintain its rights-of-way within the City involving public trees shall, on an annual basis, provide to the City Arborist a general description of such plan or plans. Such maintenance shall conform with the National Standards for Tree Care Operations as approved by the American National Standards Institute, Inc.

c. For purposes of this Section, the term "public utility" means any person engaging in the provision of public services which are regulated by the Public Service Commission of West Virginia.

The question being on the passage of the Bill a roll call was taken and there 22, nays-0, absent-5, as follows:
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6974, passed.

3. Your Committee on Ordinance and Rules has had under consideration Resolution No. 259-03, and reports the same to Council with the recommendation that the Resolution be adopted.

Resolution No. 259-03 – Approving and adopting the attached "Urban Tree Specifications and Standards of Practice", Promulgated pursuant to City Code Sec. 28-48.

Be it Resolved by the Council of the City of Charleston, West Virginia :

The attached "Urban Tree Specifications and Standards of Practice" are hereby approved and adopted.

The question being on the adoption of the Resolution a roll call was taken and there were;
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 259-03, adopted.

REDISTRICTING

Councilwoman Linda Nielsen, Chairman of the Council Committee on Redistricting, submitted the following reports.

Resolution No. 292-03, WHEREAS Bill No. 6953, approved as amended on December 16, 2002, fixed the number of wards in the City of Charleston, fixed the number of persons to be elected from such wards, and fixed the boundaries of such wards; and

WHEREAS Bill No. 6953, increased the number of wards from 20 to 21 so that each ward may have equal representation on the governing body; and

WHEREAS boundaries for wards in Bill 6953 were constrained by existing precinct boundaries and there was a sense during this process that given more time and the possibility of different precinct lines, a better scheme may be possible; and

WHEREAS on February 24, 2003 the City received a "Notice to file complaint" letter from the Lawyer's Committee for Civil Rights Under Law alleging unintentional dilution of racial voting strength in violation of Section 2 of the Voting Rights Act, codified as 42 U.S.C. §§ 1973 *et. Seq.*; and

WHEREAS the Mayor's Select Committee on Redistricting was asked to review the concerns of the Lawyer's Committee for Civil Rights Under Law and to report their findings to Charleston

City Council; and

WHEREAS the Lawyer's Committee for Civil Rights Under Law proposed creation of wards reflection "communities of similar interest" in order to achieve representation levels of minorities on city council that reflect the level of minorities residing in the City of Charleston; and

WHEREAS Jo Vaughn from the West Virginia Legislative Redistricting Office advised the committee that Enrolled House Bill 3093, effective June 8, 2003, will require that all county voting precinct boundaries follow geographic physical features or municipal boundaries by June, 2007, to coincide with Federal Map Census Blocks; and

WHEREAS precinct lines within the City of Charleston will be changed when the Kanawha County Commission adjusts precinct lines to correspond to Federal Map Census Block lines in compliance with Enrolled House Bill 3093; and

WHEREAS the Mayor's Select Committee on Redistricting has determined that these issues need to be resolved prior to the 2007 City election to establish an appropriate number of wards that have equal representation on the governing body; now therefore

Be it resolved by the Council of the City of Charleston, West Virginia_____:

That a Select Committee on Redistricting be appointed to coordinate efforts with the Kanawha County Commission in the establishment of precinct lines within the city that address concerns in regard to the size and configuration of wards.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 292-03, adopted unanimously.

FINANCE

Councilman Larry Roller, Chairman of the Council Committee on Finance, submitted the following reports.

1. Resolution No. 282-03, "Authorizing the Finance Director to make revisions to the 2002-2003 General Fund budget as indicated on the attached list of accounts."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Finance is hereby authorized and directed to make revisions to the 2002-2003 General Fund budget as indicated on the attached list of accounts; and be it

FURTHER RESOLVED, that this budgetary revision is being made prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists

The question being on the adoption of the Resolution a roll call was taken and there were; 22, nays-0, absent-5, as follows:
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 282-03, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 283-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 283-03, "Authorizing the Finance Director to make revisions to the 2003-2004 General Fund budget as indicated on the attached list of accounts."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Finance is hereby authorized and directed to make revisions to the 2003-2004 General Fund budget as indicated on the attached list of accounts; and be it

FURTHER RESOLVED, that this budgetary revision is being made prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists.

The question being on the adoption of the Resolution a roll call was taken and there were; 22, nays-0, absent-5, as follows:
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 283-03, adopted.

3. Your Committee on Finance has had under consideration Resolution No. 284-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 284-03, "Authorizing the Mayor to sign Change order No. 2 with Pass Fire Protection, in the amount of $3,911.68, for additional work on the installation of a fire service line and adding hot tap on 10' line for the New Fire Station at Orchard Manor."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign Change order No. 2 with Pass Fire Protection, in the amount of Three Thousand Nine Hundred Eleven Dollars and Sixty-Eight cents ($3,911.68), for additional work on the installation of a fire service line and adding hot tap on 10' line for the New Fire Station at Orchard Manor. This change order increases the contract force from $16,110 to $20,021.68.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 284-03, adopted unanimously

4. Your Committee on Finance has had under consideration Resolution No. 285-03 and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 285-03, "Authorizing the Mayor to sign Change Order No. 2 with Schoolfield Harvey Electric, in the amount of $6,121, , for additional changes to the electrical contract for the New Fire Station located at Orchard Manor. (See attached list)

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign Change Order No. 2 with Schoolfield Harvey Electric, in the amount of Six Thousand One Hundred Twenty-one Dollars ($6,121), for additional changes to the electrical contract for the New Fire Station located at Orchard Manor (see attached list). This change order increases the contract price from $88,050 to $94,171.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 285-03, adopted unanimously

5. Your Committee on Finance has had under consideration Resolution No. 286-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 286-03, "Authorizing the Mayor to sign Change Order No. 1 with Central masonry, Inc., of $12,374.98, for additional work in connection with the masonry package for the New Fire Station at Orchard Manor."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign Change Order No. 1 with Central masonry, Inc., in the amount of Twelve Thousand Three Hundred Seventy-four Dollars and Ninety-eight Cents ($12,374.98), for the following work:

Add 1'4" of CMU at lower level	$4,226.10
Grouting lower level of basement at	

The location of back and end walls	$4,286.54
Add 4'8 of 8" CMU foundation at location Parallel to Ivany CMU basement wall	$3,862.34
	$12,374.98

This change order increases the contract price from $149,484 to $161, 858.98 in connection with the masonry package for the New Fire Station at Orchard Manor.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 286-03, adopted unanimously

6. Your Committee on Finance has had under consideration Resolution No. 287-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 287-03, "Authorizing the Mayor to enter into a contract with GAI Consultants, in the amount of $58,616, for design and construction management services for the Twilight Drive/Barlow Drive Storm Sewer project."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to enter into a contract with GAI Consultants, in the amount of Fifty-eight Thousand Six Hundred Sixteen Dollars ($58,616), for design and construction management services for the Twilight Drive/ Barlow Drive Storm Sewer Project.

The question being on the adoption of the Resolution a roll call was taken and there were; 22, nays-0, absent-5, as follows:
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 287-03, adopted.

7. Your Committee on Finance has had under consideration Resolution No. 288-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 288-03, "Authorizing the Mayor to sign Change Order No. 2 with Gracie R. Marker & Sons, in the amount of $36,000, for installation of ADA ramps along Kanawha Boulevard. This change order will increase the contract price for Concrete Sidewalk Accessibility Ramps from $161,750 to $197,750."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to sign Change Order No. 2 with Gracie R. Marker & Sons, in the amount of Thirty-Six Thousand Dollars ($36,000), for installation of ADA ramps along Kanawha Boulevard. This change order will increase the contract price for Concrete Sidewalk Accessibility Ramps from $161,750 to $197,750.

The question being on the adoption of the Resolution a roll call was taken and there were; 22, nays-0, absent-5, as follows:
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 288-03, adopted.

8. Your Committee on Finance has had under consideration Resolution No. 289-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 289-03, "Authorizing the Mayor to enter into a contract with B.BR. Drilling Co., in the amount of $157,000, for the Kennawa Drive Retaining Wall Project."

Be it resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to enter into a contract with B.BR. Drilling Co., in the amount of $157,000, for the Kennawa Drive Retaining Wall Project."

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 289-03, adopted unanimously

9. Your Committee on Finance has had under consideration Resolution No. 267-03, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 291-03 , A resolution supplementing Ordinance No. 6977, which supplemented Ordinance No. 4423 passed by the Council of The City of Charleston, West Virginia, on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6349 passed by the Council on June 2, 1997, by Ordinance No. 6532 passed by the Council on November 16, 1998, by Ordinance No. 6544 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, by Ordinance No. 6777 passed by the Council on March 19, 2001, and by

Ordinance No. 6948 passed by the Council on November 4, 2002; authorizing the design, acquisition and construction of certain extensions, additions, betterments and improvements to the sewerage system of The City of Charleston; authorizing the issuance of not more than $12,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, Series 2003, in one or more series as may be required, of The City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of, or available to, The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction, to fund reserve accounts for such bonds and to pay other costs in connection therewith; authorizing the issuance of not more than $2,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes, Series 2003 A, to temporarily finance the cost of such design, acquisition and construction; providing for the rights and remedies of and security for the registered owners of such bonds and notes; and adopting other provisions related thereto.

WHEREAS, the Council (the "Council") of The City of Charleston, West Virginia (the "City"), on May 19, 2003, adopted Ordinance No. 6977, which Ordinance authorized the issuance of The City of Charleston Sewerage System Bond Anticipation Notes, Series 2003 A (the "Notes"), in an aggregate principal amount not to exceed $2,000,000, to temporarily finance the cost of design, acquisition and construction of certain extensions, additions, betterments and improvements to the sewerage system of the City, and all as more fully set out therein (said Ordinance is hereinafter referred to as the "Ordinance");

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Ordinance when used herein;

WHEREAS, the Ordinance provides for the issuance of the Notes, all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and further provides that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of and matters relating to, the Notes should be established by a supplemental resolution;

WHEREAS, the Ordinance, pursuant to Section 6 of the Act, directed the City Clerk to publish an abstract of the Ordinance (the "Abstract"), together with a notice that the Ordinance has been adopted, that the City contemplates the issuance of the Notes as described in the Ordinance and that any person interested may appear before the Council upon a certain day and present protests (the "Notice");

WHEREAS, the Ordinance required that the Abstract and Notice be published as a Class II legal advertisement in the Charleston Daily Mail and Charleston Gazette, two newspapers published and of general circulation in the City, and the first publication of such Abstract and Notice was to be not less than ten (10) days before the date set by the Ordinance and the Notice at which interested persons may appear before the Council and present protests, and the last publication of such Abstract and Notice was to be prior to said date set by the Ordinance and the Notice;

WHEREAS, the Ordinance and the Notice provided for a public hearing to be held at 7:00 p.m., prevailing time, on June 2, 2003, in Council Chambers in City Hall; and

WHEREAS, Bank One, West Virginia, National Association, Charleston, West Virginia (the "Bank"), proposes to purchase the Notes from the City pursuant to the terms and conditions set forth under the commitment letter of the Bank, dated April 11, 2003 (the "Bank Commitment Letter") and by entering into a line of credit agreement with the City (the "Line of Credit Agreement");

WHEREAS, the Council of the City deems it essential and desirable that this resolution (the "Supplemental Resolution") be adopted, that the Bank Commitment Letter and the Line of Credit Agreement be approved and ratified by the City, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Notes be fixed hereby in the manner stated herein, and that other matters relating to the Notes be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA, AS FOLLOWS:

Section 1. It is hereby found and determined that:

(A) The Abstract and Notice were duly published in the Charleston Gazette and Charleston Daily Mail, two newspapers published and of general circulation in the City, with the first publication thereof being not less than ten (10) days before the day set by the Ordinance and the Notice for the public hearing, at which interested persons may appear before the Council and present protests and suggestions and with the last publication thereof being prior to said date set by the Ordinance and the Notice for the public hearing, and the Affidavit of Publication reflecting such publications is incorporated herein by reference;

(B) In accordance with the Ordinance and the Notice, the City Clerk has maintained in his office a certified copy of the Ordinance for review by interested persons during the regular office hours of such office;

(C) In Council Chambers, City Hall, Charleston, West Virginia, on June 2, 2003, at 7:00 p.m. prevailing time, in accordance with the Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) At the public hearing, no significant reasons were presented that would require modification or amendment of the Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the City; and

(E) The Ordinance shall be put into effect as of the date hereof and the Notes contemplated thereby shall be issued, all as provided in the Ordinance and this Supplemental Resolution.

Section 2. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued The City of Charleston Sewerage System Bond Anticipation Notes, Series 2003 A (the "Notes"), originally represented by a single note, numbered AR-1, and shall be in the original aggregate principal amount of $2,000,000, or such lesser amount as shall be reflected on the Record of Advances and Payments attached thereto. The Notes shall be dated the date of delivery thereof, shall finally mature on June 1, 2005, and shall bear interest at a variable rate indexed to one-month London Interbank Offered Rate ("LIBOR"), plus 95 basis points, subject to monthly calculation and adjustment. Interest is payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2003. Interest shall accrue only on the amount of the outstanding indebtedness from the actual date of each advance as listed on the Record of Advances and Payments and shall cease to accrue on the amount outstanding, or portions thereof, as the same are paid, as reflected on the Record of Advances and Payments. The entire outstanding principal balance of the Notes and all interest accrued thereon shall be payable in full on June 1, 2005. The Notes may be prepaid at any time without penalty.

Section 3. All other provisions relating to the Notes shall be as provided in the Ordinance. The text of the Notes shall be in substantially the form set forth in Exhibit A attached hereto, with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Notes by the Mayor shall be conclusive evidence of such approval.

Section 4. The City hereby ratifies, approves and accepts the Bank Commitment Letter, which is incorporated herein by reference. The sale of the Notes to the Bank is hereby approved. The Notes shall be executed in the name of the City by the signature of the Mayor and the seal of the City shall be impressed thereon and attested by the signature of the City Clerk.

Section 5. The City hereby ratifies, approves and accepts the Line of Credit Agreement, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and the execution and delivery of the Line of Credit Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the City, are hereby authorized, directed, ratified and approved.

Section 6. The City hereby appoints and designates Bank One, West Virginia, National Association, Charleston, West Virginia, to serve as Registrar for the Notes and hereby directs the Registrar to authenticate, register and deliver the Notes to the Bank on the date of closing.

Section 7. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Notes.

Section 8. The design, acquisition and construction of the Project and the temporary financing thereof with proceeds of the Notes are in the public interest, serve a public purpose of the City and will promote the health, welfare and safety of the residents of the City.

Section 9. The City hereby approves and accepts all contracts relating to the financing, design, acquisition and construction of the Project.

Section 10. This Supplemental Resolution shall take effect immediately upon adoption hereof.

The question being on the adoption of the Resolution a roll call was taken and there were; 22, nays-0, absent-5, as follows:
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 291-03, adopted.

10. Your Committee on Finance has had under consideration a bid submitted by JGB Enterprises, Inc., for purchase of various sections of fire hose for installation of City fire trucks at the unit prices listed on the attached tabulation sheet. The fire department will purchase the hire hose on an as needed basis and the prices will remain in effect up to one (1) year from date of firm order. To be charged to Account No. 001-976-00-706-4-459, Fire Department –Capital Outlay, Equipment, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted unanimously.

11. Your Committee on Finance has had under consideration Bill No. 6979, and reports the same to Council with the recommendation that the Bill do pass.

Bill No 6979, a Bill amending and reenacting Chapter Thirty-one, Article Seven, Section Two Hundred Thirteen of the Vehicles and Traffic law of the Code of The City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, amending and supplementing certain parking fees for certain municipal parking facilities.

Be it Ordained by the Council of the City of Charleston, West Virginia:

That the Council of the City of Charleston does hereby amend and reenact Chapter Thirty-one, Article Seven, Section Two Hundred Thirteen of the Vehicles and Traffic Law of the Code of The City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, to read as follows:

Sec. 31-213. Management of and regulations governing city owned lots and buildings.

(a) All parking lots and buildings owned or operated by the City shall be operated under the control and management of the Parking Facilities Committee, who are hereby authorized to promote rules and regulations governing such usage not inconsistent herewith. It shall be unlawful for any person to park any motor vehicle or other conveyance so as to occupy space in such parking lots or buildings without making payment of the appropriate fees or charges therefore as hereinafter provided. Motor vehicles shall be parked, placed, handled, and driven into, from, in, and on such parking lots in accordance with the applicable laws and ordinances of the City relative to traffic upon the streets in the City, and in accordance with the rules and regulations respecting usage of such parking lots which are adopted and promulgated by the Parking Facilities Committee, and in accordance with the directions, instructions and order of the official city attendants of each of such lots stationed thereon. It shall be unlawful for any person or vehicle to block any driveway or passageway in or upon such parking lots or buildings, or for persons to leave or park cars therein contrary to the applicable ordinances, rules and regulations and instruction of attendants, as aforesaid, or without paying the required rental fees.

(b) The rental fees for each separate usage of any single parking space on any parking lot not specifically set forth below shall be at the rate of three dollars per day.

(c) The rental fees for each separate usage for any single parking space in Civic Center Parking Buildings North and South and on the surface parking lot adjacent to the Charleston Civic Center shall be as follows:

(1)	6:00 a.m. through 5:00 p.m.		
	Less than one hour	$	1.00
	One to two hours		2.00
	Two to three hours		3.00
	Daytime maximum		3.00
(2)	5:00 p.m. through 6:00 a.m.		
	Less than one hour	$	1.00
	One to two hours		2.00
	Two to three hours		3.00
	Daytime maximum		3.00
(3)	Events (pre-charge)	$	3.00
(4)	Civic Center North, per month (exclusive of event parking)	$	25.00

(d) The rental fee for each separate usage of any single metered parking space in the parking lot owned by the City behind City Hall and the single metered parking spaces on the west side of Laidley Street between Kanawha Boulevard and Virginia Street East shall be Twenty-five cents for thirty-six minutes. The rental fee for each separate usage of any single metered parking space in the lot behind the Municipal Auditorium shall be Fifty cents per hour shall be Thirty Dollars per calendar month, provided that the fee for each unmetered parking

space leased on a monthly basis after July 1, 2000 shall be Forty Dollars per calendar month. The rental fee for each separate usage of any single metered parking space in City owned off-street parking lot, not otherwise expressly set forth in this Bill, shall be at a rate of One Dollar per calendar day, excluding Sunday and legal holidays. The rental fee for each separate usage of any of the five spaces in the Summers Street alley shall be Seventy-five dollars per month plus a Ten Dollar activation fee.

(e) Parking shall be provided for city employees on the top floor of Building No. 5. The City shall pay the Parking System Sixty Dollars per month per employee for Shanklin #5 and Sixty Dollars per month per employee for the Civic Center Garages. The City Manager shall report quarterly to the Parking Facilities Committee the number of employees and the allocation of parking spaces between the two buildings; Council parking – twenty-six permits at Two Dollars per day, an average of one day per week for forty-eight weeks). The Parking System Director shall make available to members of Council, parking spaces in the Shanklin Park parking facility on or about 6:00 p.m. for attending meetings of Council or its committee under the same terms and conditions as the Director makes available to City employees. The City has provided 10 parking spaces on the west side of Laidley Street between Kanawha Boulevard and Virginia Street East to the Parking System to be used as metered parking in exchange for the use of 10 reserved spaces within Building No. 5. This exchange shall stay in effect until the earlier of January 1, 2002 or the date the City and/or Parking Facilities Committee shall provide a written notice of termination to the other party.

(f) Civic Center event parking in lots A, B, C, D and E, as shown on the attached map and incorporated herein by reference, shall be at the rate of three dollars per event. Any or all of lots A, B, C, D, and E may be leased to merchants or business associations for mutually agreed upon covenants; provided that such groups do not impose parking fees upon the general public for parking privileges. Any such leases shall be subject to the approval of the City Council's Parking Facilities Committee.

(g) Persons using the facilities at the ice arena at the Charleston Civic Center, except when the Civic Center facility lot is being used for event parking, may use the parking lot adjacent to this facility at no charge, provided they take a parking ticket on entering the lot and have the ticket stamped by the facility's personnel before departing the facility.

(h) Except as set forth in paragraph (e) above, the rental fees for each separate usage of any single parking space in any parking building constructed or operated by the City, other than fees for parking buildings otherwise expressly set forth in this section shall be as follows:

(1) 6:00 a.m. to 10:00 p.m.
Hourly parking rates: One dollar per hour, up to a maximum of five dollars per day.

Building No. 6 (Summers Street Parking Garage)

5:00 p.m. to 11:00 p.m. One dollar
Monday thru Friday

(2)	Monthly Non-Reserve Space Parking:	Sixty dollars per month.
(3)	Reserve Space parking:	Seventy dollar per month plus one time activation cost fee of Ten dollars.
(4)	Service Fee:	Fifteen dollar monthly service fee charged to all accounts if paid after the tenth of the month.
(5)	Deposit:	Ten dollar deposit for each monthly card. Ten dollar additional charge for each lost or destroyed card.
(6)	Event pre-charge:	Four dollars for pre-approved events or activities scheduled for more than four hours and/or beginning before 5:00 p.m. Three dollars for pre-approved events or activities scheduled for less than four hours and beginning after 5:00 p.m.

(i) Notwithstanding any provision of this section to the contrary, there shall be a separate hotel usage rate for Building No. 6, better know as the Summers Street Parking Garage and Building No. 2, better known as the Washington Street Parking Garage, which shall consist of an initial rate and an overage rate, subject to the following conditions and calculated as provided below:

1. There shall be two time periods used in calculating the hotel usage rate: "Peak Period" shall mean the period beginning at 9:00 a.m. and ending at 4:00 p.m., Monday through Friday; "Off Peak" shall mean any time period not considered "Peak Period" and includes weekends and legal holidays established pursuant to the West Virginia Code; "Parking Day" shall mean a period of 24 hours, or any time increment of less that 24 hours therein, commencing at 4:00 p.m. and ending the following 3:39p.m.

2. The initial rate shall be $2.00 per car Parking Day with a minimum annual average of 50 cars per Parking Day, and said initial rate shall be payable quarterly in advance to guarantee the hotel usage rate.

3. The hotel usage rate shall apply only to the extent that no more than 30% of the cars parked during a Parking Day are parked during Peak Periods. Cars parked in excess of such 30% during the Peak Periods shall be charged the standard daily charge per car to the general public, such excess parking amount to be calculated on the average number of cars parked per quarter and paid quarterly in arrears.

4. The overage rate shall be $1.00 per car per Parking Day for each car in excess of the fifty car minimum per day, calculated in the average number of cars parked per quarter and paid quarterly in arrears.

5. The initial rate shall be adjusted annually based upon the greater of (i) 50%of the daily charge per car to the general public; or (ii) the actual increase in additional costs to the Parking System associated with accommodating the hotel usage rate including but not limited to any security costs incurred by the Parking System, plus 15%.

6. Each contract in conjunction with the hotel usage rate shall be approved by the City Council and such contract shall be subject to the terms of the Parking System Rate Ordinance, as it is amended from time to time.

(j) Removal of any vehicle from any parking lot shall terminate the right of the user for that vehicle created by prior payment of rental fees. No vehicle shall be reparked on any City parking lot on the same day except upon payment of the rental fees hereinabove provided.

(k) In on or before November 15, 2001, and November 15 of each succeeding year thereafter, the City Council, upon recommendation of the parking facilities Committee, adopts a resolution calling for the same, the City shall provide for two hour non-ticket parking at the on-street metered parking spaces for each Saturday in the following December; provided that each vehicle parked at a meter in excess of two hours will be ticketed and the penalty shall be Twenty-Five Dollars.

(l) The Parking Facilities Committee may by resolution adopt short term perking promotions when it determines that such promotions will enhance the use of the Parking System and will have no adverse effect on the revenue of the Parking System.

(m) Hereafter, no parking space shall be sold or occupied, except by the payment of the appropriate additional; rental fees, for a longer periods of time that those above stated.

(and providing for a Public Hearing to be held)

The question being on the passage of the Bill a roll call was taken and there 22, nays-0, absent-5, as follows:
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.

ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Bill No. 6979, passed.

12. Your Committee on Finance has had under consideration a Payment of invoices from Rodney Loftis & Son Contracting, Inc., in the total amount of $15,585, for removal of asbestos containing materials from the structures at 309 Stockton Street (1,421 sf) pursuant to the contract price of $2.50 per square foot, approved by Council on March 17, 2003. To be charged to the following accounts: $12,032.50 – 009-002-00-033-0-999, CDBG –Demolition; $3,552.50 – 001-436-00-000-2-230, Building Commission –Contracted Services, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the Committee Report a roll call was taken and there were; 22, nays-0, absent-5, as follows:
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Committee Repot adopted.

13. Your Committee on Finance has had under consideration a Payment of invoices from Astech Corporation, in the total amount of $31,448.80, for demolition of a garage structure at 411 Wertz Avenue (2,818 sf); demolition and asbestos abatement of structure at 1863 Chandler Drive (3,312 sf); demolition of structure at 1535 ½ Dixie Street (2,240 sf); and demolition of structure at 1512 Lewis Street (3,872 sf). The cost of demolition is based upon the contract price of $1.99 per square foot, approved by Council on April 7, 2003. To be charged to the following accounts; $5,607.82 – 001-436-00-000-2-230, Building Commission –Contracted Service; $25,840 – 009-002-00-033-0-999, CDBG Demolition. , and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the Committee Report a roll call was taken and there were; 22, nays-0, absent-5, as follows:
YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
NAYS: None.
ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Committee Repot adopted.

14. Your Committee on Finance has had under consideration a Payment of an invoice from Charleston Newspapers, in the amount of $4,220.36, for publication of the Official Ballot for the City of Charleston General Election held on May 20, 2003. To be charged to Account No. 001-438-00-000-2-230, Election Costs—Contracted Services, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted unanimously.

15. Your Committee on Finance has had under consideration a Payment of an invoice from Dinsmore & Shohl, LLP, in the amount of $3,386.25 for professional services rendered through March 31, 2003, relating to the HIPAA compliance matter. To be charged to Account No. 001-417-00-000-2-223, Legal Department –Professional Services, and reports the same to Council with the recommendation that the committee be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted unanimously.

REPORTS OF OFFICERS

NONE.

NEW BILLS INTRODUCED

NONE.

UNFINISHED OR MISCELLANEOUS BUSINESS

NONE.

ROLL CALL

The Clerk called the roll and the following members were in attendance:

YEAS: Davis, Fouty-Young, Haas, Harris, Jones, Kimberling, Knauff, David Lanham, James Lanham, Loeb, Markham, McKnight, Molgaard, Morton, Nielsen, Prunty, Quick, Reishman, Roller, Talkington, Weintraub, and Mayor Goldman.
ABSENT: Charnock, Crickenberger, Lane, Lopez, Pettry.

At 7:50 p.m., on motion of Councilman Loeb, Council adjourned until 7:00 p.m., Monday, June 16, 2003.

Jay Goldman, Honorable Mayor

James M. Reishman, City Clerk

CITY OF CHARLESTON
P.O. BOX 2749
CHARLESTON, WEST VIRGINIA 25330

I, the undersigned City Clerk of Charleston, do hereby certify that the foregoing is a true, correct and complete copy of Council Minutes for March 15, 2004, enacted by the City Council of the City of Charleston on March 15, 2004.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 22nd day of March, 2004.

City Clerk

Seal

JOURNAL

OF THE

COUNCIL

CITY OF CHARLESTON

WEST VIRGINIA

MARCH 15, 2004

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE SECOND MEETING IN THE MONTH OF MARCH ON THE 15th DAY, IN THE YEAR 2004, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES, AT 7:00 P.M. THE INVOCATION WAS DELIVERED HARRY DEITZLER, AND THE PLEDGE OF ALLEGIANCE WAS LEAD BY JERRY WARE.

THE CLERK CALLED THE ROLL AND THE FOLLOWING MEMBERS ANSWERED TO THEIR NAMES:

CHESTNUT	CLOWSER	DEITZLER
DAVIS	EALY	HALL
HANNA	HARRIS	HARRISON
HIGGINS	JONES	LANE
LANHAM	LOEB	MORTON
MILLER	MONROE	MARKHAM
NIELSEN	REED	REISHMAN
ROBERTSON	SADD	TALKINGTON
WARE	WEINTRAUB	
MAYOR JONES		

TWENTY-SEVEN MEMBERS BEING PRESENT, THE MAYOR DECLARED A QUORUM.

PENDING THE READING OF THE JOURNAL OF THE PREVIOUS MEETING, THE READING THEREOF WAS DISPENSED WITH AND THE SAME DULY APPROVED.

CHARLESTON CITY COUNCIL JOURNAL MARCH 15, 2004

PUBLIC SPEAKERS

NONE

The Mayor Announced the following:

ELECT NEW COUNCILMEMBER

"PURSUANT TO THE PROVISIONS OF SECTION 14 OF THE CHARTER OF THE CITY OF CHARLESTON, I NOW DECLARE THE FLOOR OPEN FOR NOMINATIONS TO FILL THE VACANCY OF THE UNEXPIRED TERM FOR WARD 4 COUNCILMEMBER."
MOTION WAS MADE BY COUNCILMAN REISHMAN, AND SECOND BY TOM LANE, TO NOMINATE REVEREND JAMES EALY.

THE QUESTION BEING ON THE APPROVAL TO CLOSE THE NOMINATIONS,

ALL IN FAVOR VOTE "AYE".....
ALL OPPOSED VOTE "NAY"

WITH NOMINATIONS BEING CLOSED, I DECLARE

James Ealy,

ELECTED BY ACCLAMATION TO THE VACANT UNEXPIRED TERM OF COUNCILMEMBER FOR THE 4TH WARD.

REVERENED JAMES EALY CAME FORWARD TO TAKE THE OATH OF OFFICE.

CLAIMS

1. A claim of Eric Blankenship, 4618 Lancaster Ave., Charleston, WV; alleges damage to vehicle;
Refer to City Solicitor.

2. A claim of Phyllis Gladwell, 1404 Sweetbrier Rd., Charleston, WV; alleges damage to property;
Refer to City Solicitor.

3. A claim of Janene Seacrist, 3822 Noyes Ave., Charleston, WV; alleges damage to property;
Refer to City Solicitor.

4. A claim of Alisa Spaulding, 618 Grant St., Apt. A, Charleston, WV; alleges damage to

vehicle;
Refer to City Solicitor.

5. A claim of Alice Bell, Rt. 7 Box 235, South Charleston, WV; alleges damage to vehicle;
Refer to City Solicitor.

6. A claim of Karl Burdke, 1511 MacCorkle Ave., Cabin Creek, WV; alleges damage to vehicle;
Refer to City Solicitor.

COMMUNICATIONS

The Clerk read the following Appointments:

TO: **JAMES REISHMAN**
CITY CLERK

FROM: **DANNY JONES**
MAYOR

RE: **SPRINGHILL CEMETERY BOARD**

DATE: **FEBRUARY 2, 2004**

I am reappointing Tom Tolliver, 702 Hall Street, Charleston, be appointed to the Spring hill Cemetery Board, with said term to expire April 6, 2010.

I respectfully request City Council's approval of this recommendation.

Council Approved the appointment.

The Clerk read the following communication:

Honorable Danny Jones and
City Council Members
Charleston, West Virginia 25301

Dear Mayor Jones and Councilmember's:

On March 3, 2004, the Municipal Planning Commission held its public hearings and its regular monthly meeting. The following cases were heard by the Commission:

Bill No 7027 – Petition of Richard Heath on behalf of Kanawha Manufacturing No. requesting a Bill to rezone the property located at 4825, 4827, and 4829 Washington Avenue, S.E. (Kanawha City Tax map 14, Parcel 90) from R-4 Single Family Residential District.

Special Permit 1140 – Application of Kanawha Valley Senior Services, Inc. requesting a Special Permit for a professional office in an R-10 High Density Multi Family Residential District accessory to the dwelling located at 2504 Kanawha Boulevard, East.

These Cases should be referred to the Planning Committee of Council.

The Mayor referred the cases to the Planning Committee.

MISCELLANEOUS RESOLUTIONS

Resolution No. 504-04 : Authorizing the Mayor to enter into an "Automatic Aid Agreement" with the City of South Charleston providing for the fire departments of both Charleston and South Charleston to automatically be dispatched to and respond to all fires, automobile accidents and rescue calls (not including medical first responder calls) occurring in three geographic areas, said boundaries and terms are more specifically described in the attached agreement; and (due to its specific interaction with such automatic aid agreement) continuing an existing "Reciprocal Fire Protection Agreement" with the City of South Charleston, adopted by Charleston City Council on February 22, 1977, but automatically terminating the same in the event the attached "Automatic Aid Agreement" is terminated by either city. The purpose of this resolution is to further the continued cooperation between the City of Charleston and the City of South Charleston to better protect the lives and property of citizens in both cities, as well as for the efficiency, cost savings, and economies of scale which will result from both cities continuing to work harmoniously together.

Be it Resolved by the Council of the City of Charleston, West Virginia;

That the Mayor is authorized and directed to enter into an "Automatic Aid Agreement" with the City of South Charleston providing for the fire departments of both Charleston and South Charleston to automatically be dispatched to and respond to all fires, automobile accidents and rescue calls (not including medical first responder calls) occurring in three geographic areas, said boundaries and terms are more specifically described in the attached agreement; and,

That the existing "Reciprocal Fire Protection Agreement" with the City of South Charleston, adopted by Charleston City Council on February 22, 1977, shall continue in force until further action of this council, except that the "Reciprocal Fire Protection Agreement" shall be automatically terminated in the event the attached "Automatic Aid Agreement" is terminated by either city.

All prior inconsistent ordinances, rules and resolutions are hereby repealed.

This resolution will become effective immediately upon adoption by Council.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 504-04, adopted.

STREETS AND TRAFFIC

Councilman David Higgins, Chairman of the Council Committee on Streets and Traffic, submitted the following reports.

1. Bill No. 7018 - A Bill to establish a No Parking Anytime on Pavement Tow-Away on Vista Avenue from Garvin Avenue to a point 160 feet west of Garvin Avenue and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, Traffic Law, Chapter thirty-one, Article three, to conform therewith.

Be it Ordained by the Council of the City of Charleston, West Virginia:

Section 1. A No Parking Anytime On Pavement Tow-Away on Vista Avenue from Garvin Avenue to a point 160 feet west of Garvin Avenue is hereby established.

Section 2. The Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, one thousand nine hundred seventy-five, as amended, Traffic Law, Chapter thirty-one, Article three, shall be and hereby are amended, to conform to this Ordinance.

The question being on the passage of the Bill a roll call was taken and there yeas-27, nays-0, absent-1, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.
NAYS:
ABSENT: White

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7018, passed.

2. A Bill to establish a Vehicular Parking zone for the exclusive use of the physically disabled on the easterly side of Elizabeth Street from a point 30 feet north of Virginia Street to a point 74 feet north of Virginia Street to provide for the removal of vehicles illegally parked in these spaces, to incorporate the provisions of West Virginia code, Chapter 17C, Article 13, Section 6, and amending the Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Chapter one hundred fourteen, Article five, to conform therewith.

Be it Ordained by the Council of the City of Charleston, West Virginia:
a Vehicular Parking zone for the exclusive use of the physically disabled on the easterly side of Elizabeth Street from a point 30 feet north of Virginia Street to a point 74 feet north of Virginia Street is hereby established.

Section 2. In order for a physically disabled person to utilize the parking spaces provided in the preceding section the vehicle which they are driving or in which they are being transported must display the distinguishing insignia provided for in West Virginia Code, Chapter 17C, Article 13, Section 6.

Section 3. It shall be unlawful for any vehicle not displaying the insignia provided in Section 2 to park in those spaces for the disabled provided for in Section 1. Any vehicle in violation of this section may be ticketed and impounded as provided for in Chapter 114, Vehicles and Traffic Law, Code of the City of Charleston, West Virginia.

Section 4. The Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Chapter one hundred fourteen, Article five, shall be and hereby are, amended to conform to this Ordinance.

The question being on the passage of the Bill a roll call was taken and there yeas-27, nays-0, absent-1, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.
NAYS:
ABSENT: White

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7041, passed.

3. Bill No. 7042 - A Bill to establish a No Parking Anytime On Pavement Tow-Away on McDavid Lane and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand three, as amended, Traffic Law, Chapter one hundred fourteen, Article five, to conform therewith.

Be it Ordained by the Council of the City of Charleston, West Virginia:

Section 1. A No Parking Anytime On Pavement Tow-Away on McDavid Lane is hereby established.

Section 2. The Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, two thousand three, as amended, Traffic Law, Chapter one hundred fourteen, Article five, shall be and hereby are amended, to conform to this Ordinance.

The question being on the passage of the Bill a roll call was taken and there yeas-27, nays-0, absent-1, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.
NAYS:
ABSENT: White

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7042, passed.

FINANCE

Councilman Bobby Reishman, Chairman of the Council Committee on Finance, submitted the following reports.

1. Your Committee on Finance has had under consideration Resolution No. 494-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 494-04 – "Authorizing the Mayor to enter into an agreement with the West Virginia Department of Transportation, Division of Highways, with regard to the establishment and maintenance of traffic signal systems on MacCorkle Avenue at eleven intersections."

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor is hereby authorized and directed to enter into an agreement with the West Virginia Department of Transportation, Division of Highways, with regard to the establishment and maintenance of traffic signal systems on MacCorkle Avenue at the following eleven intersections:

MacCorkle Avenue at:	31st Street (CAMC)
	35th Street
	36th Street
	39th Street
	42nd Street
	46th Street
	50th Street
	53rd Street
	57th Street
	Kanawha Mall
	58th Street

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 494-04, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 495-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 495-04 – "Authorizing the Mayor to enter into a contract with B.B.R. Drilling Company, in the amount of $138,334, for construction of two(2) retaining walls on Baker Lane."

Be it Resolved by the Council of the City of Charleston, West Virginia_____:

That the Mayor is hereby authorized and directed to enter into a contract with B.B.R. Drilling Company, in the amount of One Hundred Thirty-eight Thousand Three Hundred Thirty-three Dollars ($138,334), for construction of two(2) retaining walls on Baker Lane.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 495-04, adopted.

3. Your Committee on Finance has had under consideration Resolution No. 496-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 496-04 – "Authorizing the Mayor to enter into a contract with West Virginia Paving, Inc., in the amount of $31,732, for the resurfacing of four tennis courts at the Martin Luther King Community Center."

Be it Resolved by the Council of the City of Charleston, West Virginia_____:

That the Mayor is hereby authorized and directed to enter into a contract with West Virginia Paving, Inc., in the amount of Thirty-one Thousand Seven Hundred Thirty-two Dollars ($31,732), for the resurfacing of four tennis courts at the Martin Luther King Community Center.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-27, nays-0, absent-1, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.
NAYS:
ABSENT: White
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 496-04, adopted.

4. Your Committee on Finance has had under consideration Resolution No. 497-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 497-04 – "Authorizing the Mayor to enter into a contract with Skilton Contracting, in the amount of $4,938.94, for paving the basketball court at Vandalia Neighborhood Center."

Be it Resolved by the Council of the City of Charleston, West Virginia_____:

That the Mayor is hereby authorized and directed to enter into a contract with Skilton Contracting, in the amount of Four Thousand Nine Hundred Thirty-eight Dollars and Ninety-four Cents ($4,938.94), for paving the basketball court at Vandalia Neighborhood Center.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-27, nays-0, absent-1, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.
NAYS:
ABSENT: White
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 497-04, adopted.

5. Your Committee on Finance has had under consideration Resolution No. 498-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 498-04 – "Authorizing the Mayor to enter into an agreement with Hall Signs, Inc., in the amount of $8,636, for purchase of wayfinding sign blanks to provide for signage in strategic locations to direct residents and visitors to major public areas and places in the City and its environs, in conjunction with guidelines adopted under the Wayfinding Commission."

Be it Resolved by the Council of the City of Charleston, West Virginia_____:

That the Mayor is hereby authorized and directed to enter into an agreement with Hall Signs, Inc., in the amount of Eight Thousand Six Hundred Thirty-six Dollars ($8,636), for purchase of Wayfinding sign blanks to provide for signage in strategic locations to direct residents and visitors to major public areas and places in the City and its environs, in conjunction with guidelines adopted under the Wayfinding Commission.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 498-04, adopted.

6. Your Committee on Finance has had under consideration Resolution No. 499-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 499-04 – "Authorizing the Mayor to enter into a contract with O'Rourke Wrecking Company, in the total amount of $644,000, for Demolition and Asbestos Abatement Services at the new ballpark."

Be it Resolved by the Council of the City of Charleston, West Virginia_____:

That the Mayor is hereby authorized and directed to enter into a contract with O'Rourke Wrecking Company, in the total amount of Six Hundred Forty-four Dollars ($644,000), for

Demolition and Asbestos Abatement Services at the new ballpark.

The question being on the adoption of the Resolution a vote was taken. There being dissent from Councilpersons Markham and Chestnut, the Mayor declared Resolution No. 499-04, adopted.

7. Your Committee on Finance has had under consideration Resolution No. 500-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 500-04 – "Authorizing the Mayor to enter into a contract with Chapman-Martin Excavation & Grading, Inc., in an amount not to exceed $2,160,000, for the Mass Excavation Project at the new ballpark."

Be it Resolved by the Council of the City of Charleston, West Virginia_____:

That the Mayor is hereby authorized and directed to enter into a contract with Chapman-Martin Excavation & Grading, Inc., in an amount not to exceed Two Million One Hundred Sixty Thousand Dollars ($2,160,000), for the Mass Excavation Project at the new ballpark.

The question being on the adoption of the Resolution a vote was taken. There being dissent from Councilpersons Markham and Chestnut, the Mayor declared Resolution No. 500-04, adopted.

8. Your Committee on Finance has had under consideration Resolution No. 501-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 501-04 – "Authorizing the Mayor to enter into a contract between the City of Charleston, the University of Charleston, and the West Virginia Little League, District Three, with respect to the use of the baseball facility at Watt Powell Park and the Blackwell Athletic Field. The term of the contract commences from date of signing by respective parties and terminates on December 31, 2004."

Be it Resolved by the Council of the City of Charleston, West Virginia_____:

That the Mayor is hereby authorized and directed to enter into a contract between the City of Charleston, the University of Charleston, and the West Virginia Little League, District Three, with respect to the use of the baseball facility at Watt Powell Park and the Blackwell Athletic Field. The term of the contract commences from date of signing by respective parties and terminates on December 31, 2004.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 501-04, adopted.

9. Your Committee on Finance has had under consideration Resolution No. 502-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 502-04 – "Authorizing the Mayor to sign a Certificate confirming that funds have

been provided in the City's 2004-2005 budget for its contribution to the Regional Intergovernmental Council (RIC), in the amount of $21,118.67, representing the City's share of contributions received annually by RIC from local governmental agencies in Boone, Clay, Kanawha and Putnam (BCKP) counties. The contribution is subject to Council's approval of the 2004-2005 Municipal Budget."

Be it Resolved by the Council of the City of Charleston, West Virginia_____:

That the Mayor is hereby authorized and directed to sign a Certificate confirming that funds have been provided in the City's 2004-2005 budget for its contribution to the Regional Intergovernmental Council (RIC), in the amount of $21,118.67, representing the City's share of contributions received annually by RIC from local governmental agencies in Boone, Clay, Kanawha and Putnam (BCKP) counties.

The funding formula which determines each local government's contribution is based upon applying a percentage of each community's most current assessed valuation and 2000 population to the total regional assessed valuation and population. This method of computing individual local contributions is applied to the Ninety-two Thousand Three Dollars ($92,003) amount needed by RIC to determine each member's contribution.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 502-04, adopted.

10. Your Committee on Finance has had under consideration Resolution No. 503-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 503-04 – "Authorizing the Mayor to sign the Ninth Amendment to the Lease Agreement with Real Estate Resources, Inc. for office space used by the Charleston Police Department at 110 Washington Street, West. This amendment will extend the lease or an additional six-month period from March 1, 2004 to August 31, 2004, without cost to the City."

Be it Resolved by the Council of the City of Charleston, West Virginia_____:

That the Mayor is hereby authorized and directed to sign the Ninth Amendment to the Lease Agreement with Real Estate Resources, Inc. for office space used by the Charleston Police Department at 110 Washington Street, West. This amendment will extend the lease or an additional six-month period from March 1, 2004 to August 31, 2004.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 503-04, adopted.

11. Your Committee on Finance has had under consideration Resolution No. 505-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 505-04 – "Authorizing the Finance Director to allocate funds in the amount of

$18,050 for acquisition of property for a HOME project on the City's West Side."

Be it Resolved by the Council of the City of Charleston, West Virginia_____:

That the Finance Director is hereby authorized and direct to allocate funds in the amount of Eighteen Thousand Fifty Dollars ($18,050) for acquisition of property for a HOME project on the City's West Side.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-27, nays-0, absent-1, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.
NAYS:
ABSENT: White
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 505-04, adopted.

12. Your Committee on Finance has had under consideration Resolution No. 506-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 506-04 – "Authorizing the Finance Director to make revisions to the 2003-2004 General Fund budget as indicated on the attached list of accounts."

Be it Resolved by the Council of the City of Charleston, West Virginia_____:
That the Finance Director is hereby authorized and directed to make revisions to the 2003-2004 General Fund budget as indicated on the attached list of accounts.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-27, nays-0, absent-1, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.
NAYS:
ABSENT: White
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 506-04, adopted.

13. Your Committee on Finance has had under consideration Resolution No. 508-04, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 508-04 - A resolution supplementing Ordinance No. 6977, which supplemented Ordinance No. 4423 passed by the Council of The City of Charleston, West Virginia, on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed

by the Council on September 3, 1996, by Ordinance No. 6349 passed by the Council on June 2, 1997, by Ordinance No. 6532 passed by the Council on November 16, 1998, by Ordinance No. 6544 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, by Ordinance No. 6777 passed by the Council on March 19, 2001, and by Ordinance No. 6948 passed by the Council on November 4, 2002; authorizing the design, acquisition and construction of certain extensions, additions, betterments and improvements to the sewerage system of The City of Charleston; authorizing the issuance of $9,835,120 in aggregate principal amount of Sewerage System Revenue Bonds, Series 2004 A, of The City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of, or available to, The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction, to a fund reserve account for such bonds and to pay other costs in connection therewith; providing for the rights and remedies of and security for the registered owners of such bonds; and adopting other provisions related thereto.

WHEREAS, the Council (the "Council") of The City of Charleston, West Virginia (the "City"), on May 19, 2003, adopted Ordinance No. 6977, which became effective following a public hearing on June 2, 2003, which Ordinance authorized the issuance of The City of Charleston Sewerage System Revenue Bonds, Series 2003, in an aggregate principal amount not to exceed $12,000,000, to finance the cost of design, acquisition and construction of certain extensions, additions, betterments and improvements to the sewerage system of the City, and all as more fully set out therein (said Ordinance is hereinafter referred to as the "Ordinance");

WHEREAS, the Sewerage System Revenue Bonds, Series 2003, were not issued in 2003, but will be issued in 2004;

WHEREAS, the Council desires to redesignate the Sewerage System Revenue Bonds, Series 2003, as Sewerage System Revenue Bonds, Series 2004 A (the "Bonds");

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Ordinance when used herein;

WHEREAS, the Ordinance provides for the issuance of the Bonds, all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and the terms of the Loan Agreement dated February 25, 2004, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the City, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") and further provides that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of and matters relating to, the Bonds should be established by a supplemental resolution; and

WHEREAS, the Council of the City deems it essential and desirable that this resolution (the "Supplemental Resolution") be adopted, that the Bonds be redesignated, that the Loan Agreement be ratified by the Issuer, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA, 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 redesignated Sewerage System Revenue Bonds, Series 2004 A, as follows:

(A) The Bonds shall be originally represented by a single bond, redesignated "Sewerage System Revenue Bonds, Series 2004 A", numbered AR-1, and shall be issued in the aggregate principal amount of $9,835,120. The Bonds shall be dated the date of delivery thereof, shall finally mature on June 1, 2025, and shall bear interest at the rate of two percent (2%) per annum. The principal of and interest on the Bonds are payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2005, in the amounts as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the Registered Owner of the Bonds. The Bonds shall be subject to the SRF Administrative Fee equal to 1% of the principal amount of the Bonds as set forth in the Schedule Y attached to the Loan Agreement.

(B) The proceeds of the Bonds, along with other funds of the City, shall be deposited, as received from time to time, as follows:

(1) $597,860 shall be deposited into the Series 2004 A Bonds Reserve Account; and

(2) The balance shall be deposited into the Series 2004 A Bonds Construction Trust Fund.

(C) The sale of the Bonds to the Authority is hereby approved. The Mayor is hereby authorized and directed to execute the Bonds by his manual signature and attested by the City Clerk by his manual signature and the seal of the City shall be impressed thereon.

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be as provided in the Ordinance, and the Bonds shall be in substantially the form provided in the Ordinance with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Bonds by the Mayor shall be conclusive evidence of such approval.

Section 3. The City hereby ratifies, approves and accepts the Loan Agreement, including all schedules and exhibits attached thereto, and the execution and delivery of the Loan Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the City, are hereby ratified and approved. The City hereby affirms all covenants and representations made in the Loan Agreement and in the Application to the DEP and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the City.

Section 4. The City hereby appoints and designates United Bank, Inc., Charleston, West Virginia, as the Registrar for the Bonds.

Section 5. The City hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Commission"), as the Paying Agent for the Bonds.

Section 6. The City hereby appoints and designates Bank One, NA, with its principal office in Columbus, Ohio and its service office at 707 Virginia Street, East Charleston, West Virginia, as the Depository Bank under the Ordinance.

Section 7. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds.

Section 8. The City hereby determines to invest all moneys in the funds and accounts established by the Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the City hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such money market accounts until further directed in writing by the City. Moneys in the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 9. The design, acquisition and construction of the Project and the financing thereof with proceeds of the Bonds are in the public interest, serve a public purpose of the City and will promote the health, welfare and safety of the residents of the City.

Section 10. The City hereby approves and accepts all contracts relating to the financing, design, acquisition and construction of the Project.

Section 11. The City shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code, by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. It will take all actions necessary to comply with the Code, including the Treasury Regulations promulgated thereunder.

Section 12. This Supplemental Resolution shall take effect immediately upon adoption hereof.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 508-04, adopted. Loeb - Abstain

14. Your Committee on Finance has had under consideration a proposal submitted by Taser International in the amount of $10,791.23, for purchase of four (4) Taser System stun weapons

and related supplies for use in the Charleston Police Department. To be charged to the following accounts: $5,448.15 – 091-976-00-000-4-459, Police – LLEBG/2002$5,343.08 – 043-299-00-000-3-341, Police Forfeiture Funds, and reports the same to Council with the recommendation that the committee report be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted.

15. Your Committee on Finance has had under consideration to amend the purchase of two (2) Model 2004 Dodge Durango Police Utility vehicles, approved by Council on January 20, 2004, in the amount of $45,186, by increasing the purchase price of the vehicles to $47,395. The Police Department requested a change in specification for one of the vehicles, resulting in a price increase of $2,209.To be charged to account no. 001-976-00-700-4-461, Police – Capital Outlay Lease/Purchase, and reports the same to Council with the recommendation that the committee report be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted.

16. Your Committee on Finance has had under consideration Bill No. 7043, Committee Substitute, and reports the same to Council with the recommendation that the Bill do pass.

Bill No. 7043 - - A Bill amending and reenacting Chapter two (2) of the Code of the City of Charleston, as amended, by amending sections 681, 682, 683 and 684relating to the creation, duties and finances of the Wayfinding Commission.

Be it ordained by the Council of the City of Charleston, West Virginia: That Chapter two (2) of the Code of the City of Charleston, as amended, be further amended by amending sections 681 and 683, as follows:

CHAPTER 2. ADMINISTRATION

Article VII. Boards and Commissions

Division 8. Wayfinding Commission

Sec. 2-681. Creation, composition, term of members, vacancies, compensation.

There is hereby created the Wayfinding Commission. The commission shall consist of twelve voting members who shall be appointed by the mayor and confirmed by Charleston City Council. Of these twelve members, at least three shall be selected from the Municipal Beautification Commission; at least one shall be selected from the Charleston Renaissance Corporation; at least one shall be selected from the Charleston Convention and Visitor's Bureau; at least one shall be selected from the Kanawha County Commission; at least two shall be selected from Charleston City Council; and at least one shall be selected from the City of South

Charleston. Four of the voting members first appointed shall serve for a term of one year, four for a term of two years, and four for a term of three years. Vacancies shall be filled by appointment for the unexpired term. Members of the commission shall serve without compensation. Those members selected from any entity named above-shall serve so long as they are acting members of such entity.

(Bill. No. 6936, § 2-181, 11-4-2002)

Sec. 2-682. Organization.

(a) The commission shall select annually from its membership a chairman, vice chairman, secretary and other officers as it determines necessary for the performance of its duties. A majority of the members of the commission will constitute a quorum. No action of the commission shall be official, unless authorized by a majority of the commission.

(b) The commission shall adopt such rules and hold such meetings as shall be necessary or convenient for the transaction of its business.

(Bill. No. 6936, § 2-182, 11-4-2002)

Sec. 2-683. Duties and powers.

(a) The purpose of the commission is to create, oversee and review a sign system to direct residents and visitors to major public areas and places in the city and its environs, (herein the "Wayfinding System"). The commission shall have the authority to create, use and develop the following:

(a) Geographic districts and their boundaries included in the Wayfinding System;

(b) Destination and attraction signs included in the Wayfinding System;

(c) Added amenities to the Wayfinding System, such as banners within districts;

(d) District colors;

(e) Graphic logos for the districts;

(f) A Charleston Area Wayfinding Map;

(g) A long-term maintenance program for sustaining the signs;

(h) Policies and procedures regarding licensure and/or fair use of registered, copywrited, or otherwise legally protected designs, logos, maps, signs or other intellectual property of the Wayfinding Commission; and

(i) Placement, location and removal of signs used for the purpose of providing direction to destinations in the City, and promulgation of regulations therefore.

(b) The commission shall report to City Council the plan and design of signs, the identification of geographic districts, and the assignment of district colors and any changes thereto.
(Bill. No. 6936, § 2-183, 11-4-2002)

Sec. 2-684. Finances and Reports.

(a) The commission shall have power and authority to raise funds for the purposes stated in this Division and for that purpose shall maintain operating accounts subject to periodic audit by the City. The commission shall also have power and authority to create a permanent endowment fund to be used and administered for the purposes stated in this Division.

(b) City council may appropriate funds as it deems necessary to finance the activities and expenses of the commission. Members of the commission may seek reimbursement by the commission for their reasonable actual expenses incurred in connection with the performance of their duties. The city shall not otherwise obligate itself to fund the activities or expenses of the commission.

(c) By February 1 of each year the commission shall make an annual report to City Council of its activities, a financial report showing receipts and expenditures from any accounts maintained by it and the status of any endowment funds.

(Bill. No. 6936, § 2-184, 11-4-2002)

Secs. 2-685--2-733. Reserved.

The question being on the passage of the Bill a roll call was taken and there yeas-27, nays-0, absent-1, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.
NAYS:
ABSENT: White

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7043 Committee Substitute passed.

17. Your Committee on Finance has had under consideration payment of an invoice from Alternative Service Concepts, LLC, in the amount of $5,956.50, representing additional amount due for claims handling services covering the City's general liability and auto liability insurance policies for the period March 31, 2003 to March 30, 2004. The amount of the premium was $91,949, and the actual earned amount is $97,905.50.To be charged to Account No. 001-412-00-000-2-027, City Manager – Insurance, and reports the same to Council with the recommendation that the committee report be adopted.

The question being on the adoption of the committee report a vote was taken. There being no dissent the Mayor declared the committee report adopted.

18. Your Committee on Finance has had under consideration payment of an invoice from Medtronic Physio Control, in the amount of $13,467.58, for the upgrade of heart monitors used by the Charleston Fire Department. To be charged to Account No. 009-003-00-054-0-999, CDBG – Neighborhood Facilities, and reports the same to Council with the recommendation that the committee report be adopted.

The question being on the adoption of the Committee Report a roll call was taken and there were; yeas-27, nays-0, absent-1, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reishman, Reed, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.
NAYS:
ABSENT: White.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Committee Report adopted.

REPORTS OF OFFICERS

1. Report of the City of Charleston, Municipal Court Financial Statements; February, 2004.
Received and Filed.

2. Report of the City of Charleston Financial Statements for the Eight-Month period ended February 29, 2004.
Received and Filed.

3. City Treasurer's Report to City Council Month Ending February, 2004;
Received and Filed.

NEW BILLS INTRODUCED

Introduced by Councilman Bobby Reishman on March 15, 2004:
Bill No. 7045 - A Bill to amend and revise Section 114-602 and to delete Section 114-603 of the City Code of the City of Charleston, as amended 2004, all related to parking fees.
Refer to Parking Facilities Committee and Finance Committee.

Introduced by Councilman Archie Chestnut on March 15, 2004:
Bill No. 7046 - A Bill to establish a Metered Vehicular Parking zone for the exclusive use of the physically disabled on the easterly side of Summers Street from a point 120 feet south of Washington St. East to a point 186 feet south of Washington Street East to

provide for the removal of vehicles illegally parked in these spaces, to incorporate the provisions of West Virginia code, Chapter 17C, Article 13, Section 6, and amending the Traffic Control File, established by the Code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Law, Chapter one hundred fourteen, Article five, to conform therewith.
Refer to Streets and Traffic Committee.

Introduced by Councilman Charlie Loeb on March 15, 2004:
Bill No. 7047 A bill to repeal Appendix B, Zoning, Articles 1 through 26, of the City Code of the City of Charleston, November 25, 2003, as amended; and to amend said code by adding thereto a new chapter, designated as Chapter 91, all related to land use and zoning.
Refer to Ordinance and Rules Committee.

UNFINISHED OR MISCELLANEOUS BUSINESS

The Mayor announced that he appointed a new Committee, a committee to deal with employee benefits. The committee will be chaired by Harry Deitzler, Vice-Chair will be Mark Sadd. Other members will include Brenda Robertson, Bob White, Bobby Reishman, Tom Lane, Jerry Ware, Jack Harrison and Mary Jean Davis.

ROLL CALL

The Clerk called the roll and the following members were in attendance:

YEAS: Chestnut, Clowser, Davis, Deitzler, Ealy, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reishman, Reed, Robertson, Sadd, Talkington, Ware, Weintraub, Mayor Jones.
ABSENT: White.

At 8:05 p.m., on motion of Councilman Loeb, Council adjourned until Monday, March 22, 2004, at 7:00 p.m. for a Special Budget Meeting. The next regular meeting of Council will be Monday, April 5, 2004.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk

Charleston Newspapers

P.O. BOX 2993
Charleston, WV 25330
Billing 348-4818
Classified 348-4848
1-800-WVA-NEWS

LEGAL ADVERTISING INVOICE

INVOICE DATE	05/29/03
ACCOUNT NBR	038491106
STATES REP ID	0022
INVOICE NBR	033664001

BILL TO:

JACKSON & KELLY
150 CLAY STREET
MORGANTOWN WV 26507 USA

Please return this portion with your payment.
Make checks payable to: Charleston Newspapers

AMOUNT PAID: _____

Charleston Newspapers
P.O. BOX 2993
Charleston, WV 25330
Billing 348-4818
Classified 348-4848
1-800-WVA-NEWS
FEIN 55-0676079

INVOICE DATE	05/29/03
ACCOUNT NBR	038491106
STATES REP ID	0022
INVOICE NBR	033664001

Legal pricing is based upon 63 words per column inch.
Each successive insertion is discounted by 25% of the first insertion date.
The Daily Mail is at a rate of $.11 per word, and the
Charleston Gazette is at a rate of $.11 per word.

INS DATE	AD TYPE	PUB	DESCRIPTION REFERENCE NBR / PURCHASE ORDER #	AD NUMBER	AD SIZE TOTAL RUN	RATE	GROSS AMOUNT	NET AMOUNT
			033664004		15.75	6.93	109.15	
			LEGAL DISCOUNT 25%				27.29-	81.86
			TOTAL INVOICE AMOUNT					382.02

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

I, Sandra Legg of
THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER,
THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,
published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of:
CITY OF CHARLESTON SEWER
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 22ND day of MAY 2003. Published during the following dates: 05/21/03-05/28/03

Subscribed and sworn to before me this 2 day of June

Printers fee $ 382.02

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LYNN R. FIELDER
[illegible] FRAZIER WAY
SCOTT DEPOT, WV 25560
My commission expires December 11, 2008

Notary Public of Kanawha County, West Virginia

Charleston Newspapers

P.O. BOX 2993
Charleston, WV 25330
Billing 348-4818
Classified 348-4848
1-800-WVA-NEWS

LEGAL ADVERTISING INVOICE

INVOICE DATE	05/29/03
ACCOUNT NBR	038491106
SALES REP ID	0022
INVOICE NBR	033664001

BILL TO:

JACKSON & KELLY
150 CLAY STREET
MORGANTOWN WV 26507 USA

Please return this portion with your payment.
Make checks payable to: Charleston Newspapers

AMOUNT PAID: _____

Charleston Newspapers

P.O. BOX 2993
Charleston, WV 25330
Billing 348-4818
Classified 348-4848
1-800-WVA-NEWS

FEIN 55-0676079

INVOICE DATE	05/29/03
ACCOUNT NBR	038491106
SALES REP ID	0022
INVOICE NBR	033664001

Legal pricing is based upon 63 words per column inch.
Each successive insertion is discounted by 25% of the first insertion date.
The Daily Mail is at a rate of $.11 per word, and the
Charleston Gazette is at a rate of $.11 per word.

END DATE	AD TYPE	PUB	DESCRIPTION REFERENCE NBR PURCHASE ORDER #	AD NUMBER	AD SIZE TOTAL RUN	RATE	GROSS AMOUNT	NET AMOUNT
05/21	LEGF	DM	CITY OF CHARLESTON S	0049514	1X1575			
			033664001		15.75	6.93	109.15	109.15
05/21	LEGF	GZ	CITY OF CHARLESTON S		1X1575			
			033664002		15.75	6.93	109.15	109.15
05/28	LEGR	DM	CITY OF CHARLESTON S		1X1575			
			033664003		15.75	6.93	109.15	
			LEGAL DISCOUNT 25%				27.29-	81.86
05/28	LEGR	GZ	CITY OF CHARLESTON S		1X1575			

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

I, _____ of

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

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 day of .Published during the following dates:

Subscribed and sworn to before me this _____ day of _____.
Printers fee $ _____

_____
Notary Public of Kanawha County, West Virginia

of Environmental Protection (the "Loan Agreement").

3. Authorized the execution and delivery of the Loan Agreement.

4. Directed the continuation of the Revenue Fund and the disposition of the System revenues; provided for the payment of operating expenses; provided for the monthly payment of principal and interest when due; provided for the creation of a Sinking Fund and a Reserve Account for the Bonds and continuation of the Renewal and Replacement Fund; and provided for the use of excess funds of the System.

5. Directed the creation of a Bond Construction Trust Fund and the disbursement of Bond proceeds.

6. Provided that the Bonds shall not be or constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues of the System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the holders of the Bonds to the Net Revenues of the System.

7. Provided certain conditions for the issuance of additional bonds.

8. Provided for insurance coverage on the Project; provided for the enforcement of collection of fees, rates or other charges for the System and other covenants in favor of the Bondholders.

9. Established the events of default and the remedies of the Bondholders.

10. Directed that the Notes be issued in such principal amounts and have such terms as set forth in a supplemental resolution.

11. Provided that the Notes shall not be or constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the proceeds of the Bonds.

12. Provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The City contemplates the issuance of the Bonds and the Notes 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 Charleston at a regular meeting on June 2, 2003, at 7:00 p.m., in the Council Chambers, City Hall, Charleston, West Virginia, and present protests and be heard as to whether the above-described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council of City on May 19, 2003, is on file with the City Clerk for review by interested persons at the City Hall during regular office hours, to-wit: 8:00 a.m. to 4:00 p.m., Monday through Friday.

James M. Reishman
City Clerk
City of Charleston,
West Virginia
(049514)

THE CITY OF CHARLESTON, WEST VIRGINIA

NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND AND NOTE ORDINANCE

Notice is hereby given to any person interested that on May 19, 2003, the Council of The City of Charleston, West Virginia (the "City") adopted an ordinance which, among other things:

1. Authorized the design, acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the City's existing sewerage system (the "System"), the temporary financing of such costs thereof through the issuance of not more than $2,000,000 in aggregate principal amount of Sewerage System Bond Anticipation Notes, Series 2003 A (the "Notes"), and the permanent financing of such costs thereof through the issuance of not more than $12,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, Series 2003 (the "Bonds").

2. Directed that the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution or in the Loan Agreement by and among the City, the West Virginia Water Development Authority (the "Authority") and the

NUMBER

AR-1

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF KANAWHA
THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

No. AR-1 $9,835,120

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation and political subdivision of the State of West Virginia, in Kanawha County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority "), or registered assigns, the sum of NINE MILLION EIGHT HUNDRED THIRTY FIVE THOUSAND ONE HUNDRED TWENTY DOLLARS ($9,835,120), or such lesser amount as shall have been advanced to the City hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2005, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference, with interest on each installment at the rate of two percent (2%) per annum as set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Ordinance) on this Bond shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2005, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, 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 Paying Agent(as defined in the hereinafter described Ordinance). The interest on this Bond is payable by check or draft mailed to the registered owner hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Ordinance) on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable so long as the Authority is 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 the West Virginia

Department of Environmental Protection (the "DEP") and as otherwise provided by the Loan Agreement dated February 25, 2004, among the Authority, the DEP and the City.

This Bond is issued (i) to pay the costs of design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City (the "Project"); (ii) to fund a reserve account for this Bond; and (iii) to pay certain costs of issuance hereof and related costs. The existing sewerage system of the City, the Project and any further additions, betterments and improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), Ordinance No. 4423 passed by the City on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the City on November 6, 1989, Ordinance No.4954 passed by the City on May 3, 1993, Ordinance No. 6276 passed by the City on September 3, 1996, Ordinance No. 6349 passed by the City on June 2, 1997, Ordinance No. 6532 passed by the City on November 16, 1998, Ordinance No. 6544 passed by the City on February 1, 1999, Ordinance No. 6670 passed by the City on February 5, 2001,Ordinance No. 6777 passed by the City on March 19, 2001, Ordinance No. 6948 passed by the City on November 4, 2002, Ordinance No. 6977 passed by the City on May 19, 2003, and a Supplemental Resolution adopted by the City on March 15, 2004 (collectively, the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Ordinance.

This Bond is issued on a parity with respect to liens, pledge and source of and security for payment with the First Lien Bonds and senior to the Second Lien Bonds, all as defined in the Ordinance.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues as defined in the Ordinance, to be derived from the operation of the System, on a parity with the First Lien Bonds and senior to the Second Lien Bonds, moneys in the Reserve Account created under the Ordinance (the "Series 2004 A Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 2004 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Ordinance, the City 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 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 payable in any year for principal of and interest on this Bond and all obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds; provided however,

that so long as there exists in the Series 2004 A Bonds Reserve Account an amount equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year and in the respective reserve accounts established for any obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of this Bond for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of this Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of the Registrar, kept for that purpose at the office 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 Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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 and the Ordinance, shall be applied solely to the payment of the costs of the Project and costs of issuance hereof as described in the Ordinance, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

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

All provisions of the Ordinance, 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 CHARLESTON has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its City Clerk, and has caused this Bond to be dated March 23, 2004.

[SEAL]

Mayor

SPECIMEN

ATTEST:

City Clerk

SPECIMEN

AR-1

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2004 A Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: March 23, 2004.

UNITED BANK, INC., as Registrar

By Kathy Smith
Its Authorized Officer

SPECIMEN

EXHIBIT A

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) $617,860	3/23/04	(19) $	
(2) $		(20) $	
(3) $		(21) $	
(4) $		(22) $	
(5) $		(23) $	
(6) $		(24) $	
(7) $		(25) $	
(8) $		(26) $	
(9) $		(27) $	
(10) $		(28) $	
(11) $		(29) $	
(12) $		(30) $	
(13) $		(31) $	
(14) $		(32) $	
(15) $		(33) $	
(16) $		(34) $	
(17) $		(35) $	
(18) $		(36) $	

Total $_____

EXHIBIT B

City of Charleston

Loan of $9,835,120
2.0% Interest Rate, 1.0% Administrative Fee, 20 Years
Closing Date: March 23, 2004

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
6/01/2004	-	-	-	-
9/01/2004	-	-	-	-
12/01/2004	-	-	-	-
3/01/2005	-	-	-	-
6/01/2005	-	-	-	-
9/01/2005	100,289.07	2.000%	49,175.60	149,464.67
12/01/2005	100,790.52	2.000%	48,674.15	149,464.67
3/01/2006	101,294.47	2.000%	48,170.20	149,464.67
6/01/2006	101,800.94	2.000%	47,663.73	149,464.67
9/01/2006	102,309.95	2.000%	47,154.73	149,464.68
12/01/2006	102,821.50	2.000%	46,643.18	149,464.68
3/01/2007	103,335.60	2.000%	46,129.07	149,464.67
6/01/2007	103,852.28	2.000%	45,612.39	149,464.67
9/01/2007	104,371.54	2.000%	45,093.13	149,464.67
12/01/2007	104,893.40	2.000%	44,571.27	149,464.67
3/01/2008	105,417.87	2.000%	44,046.80	149,464.67
6/01/2008	105,944.96	2.000%	43,519.71	149,464.67
9/01/2008	106,474.68	2.000%	42,989.99	149,464.67
12/01/2008	107,007.06	2.000%	42,457.62	149,464.68
3/01/2009	107,542.09	2.000%	41,922.58	149,464.67
6/01/2009	108,079.80	2.000%	41,384.87	149,464.67
9/01/2009	108,620.20	2.000%	40,844.47	149,464.67
12/01/2009	109,163.30	2.000%	40,301.37	149,464.67
3/01/2010	109,709.12	2.000%	39,755.55	149,464.67
6/01/2010	110,257.66	2.000%	39,207.01	149,464.67
9/01/2010	110,808.95	2.000%	38,655.72	149,464.67
12/01/2010	111,363.00	2.000%	38,101.68	149,464.68
3/01/2011	111,919.81	2.000%	37,544.86	149,464.67
6/01/2011	112,479.41	2.000%	36,985.26	149,464.67
9/01/2011	113,041.81	2.000%	36,422.86	149,464.67
12/01/2011	113,607.02	2.000%	35,857.66	149,464.68
3/01/2012	114,175.05	2.000%	35,289.62	149,464.67
6/01/2012	114,745.93	2.000%	34,718.74	149,464.67
9/01/2012	115,319.66	2.000%	34,145.02	149,464.68
12/01/2012	115,896.26	2.000%	33,568.42	149,464.68
3/01/2013	116,475.74	2.000%	32,988.94	149,464.68
6/01/2013	117,058.12	2.000%	32,406.56	149,464.68
9/01/2013	117,643.41	2.000%	31,821.27	149,464.68
12/01/2013	118,231.62	2.000%	31,233.05	149,464.67
3/01/2014	118,822.78	2.000%	30,641.89	149,464.67
6/01/2014	119,416.89	2.000%	30,047.78	149,464.67
9/01/2014	120,013.98	2.000%	29,450.69	149,464.67
12/01/2014	120,614.05	2.000%	28,850.62	149,464.67
3/01/2015	121,217.12	2.000%	28,247.55	149,464.67
6/01/2015	121,823.20	2.000%	27,641.47	149,464.67
9/01/2015	122,432.32	2.000%	27,032.35	149,464.67
12/01/2015	123,044.48	2.000%	26,420.19	149,464.67

City of Charleston

Loan of $9,835,120
2.0% Interest Rate, 1.0% Administrative Fee, 20 Years
Closing Date: March 23, 2004

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I
3/01/2016	123,659.71	2.000%	25,804.97	149,464.68
6/01/2016	124,278.00	2.000%	25,186.67	149,464.67
9/01/2016	124,899.39	2.000%	24,565.28	149,464.67
12/01/2016	125,523.89	2.000%	23,940.78	149,464.67
3/01/2017	126,151.51	2.000%	23,313.16	149,464.67
6/01/2017	126,782.27	2.000%	22,682.40	149,464.67
9/01/2017	127,416.18	2.000%	22,048.49	149,464.67
12/01/2017	128,053.26	2.000%	21,411.41	149,464.67
3/01/2018	128,693.53	2.000%	20,771.15	149,464.68
6/01/2018	129,336.99	2.000%	20,127.68	149,464.67
9/01/2018	129,983.68	2.000%	19,480.99	149,464.67
12/01/2018	130,633.60	2.000%	18,831.07	149,464.67
3/01/2019	131,286.77	2.000%	18,177.91	149,464.68
6/01/2019	131,943.20	2.000%	17,521.47	149,464.67
9/01/2019	132,602.91	2.000%	16,861.76	149,464.67
12/01/2019	133,265.93	2.000%	16,198.74	149,464.67
3/01/2020	133,932.26	2.000%	15,532.41	149,464.67
6/01/2020	134,601.92	2.000%	14,862.75	149,464.67
9/01/2020	135,274.93	2.000%	14,189.74	149,464.67
12/01/2020	135,951.30	2.000%	13,513.37	149,464.67
3/01/2021	136,631.06	2.000%	12,833.61	149,464.67
6/01/2021	137,314.22	2.000%	12,150.46	149,464.68
9/01/2021	138,000.79	2.000%	11,463.88	149,464.67
12/01/2021	138,690.79	2.000%	10,773.88	149,464.67
3/01/2022	139,384.25	2.000%	10,080.43	149,464.68
6/01/2022	140,081.17	2.000%	9,383.51	149,464.68
9/01/2022	140,781.57	2.000%	8,683.10	149,464.67
12/01/2022	141,485.48	2.000%	7,979.19	149,464.67
3/01/2023	142,192.91	2.000%	7,271.76	149,464.67
6/01/2023	142,903.87	2.000%	6,560.80	149,464.67
9/01/2023	143,618.39	2.000%	5,846.28	149,464.67
12/01/2023	144,336.48	2.000%	5,128.19	149,464.67
3/01/2024	145,058.17	2.000%	4,406.51	149,464.68
6/01/2024	145,783.46	2.000%	3,681.22	149,464.68
9/01/2024	146,512.37	2.000%	2,952.30	149,464.67
12/01/2024	147,244.94	2.000%	2,219.74	149,464.68
3/01/2025	147,981.16	2.000%	1,483.51	149,464.67
6/01/2025	148,721.07	2.000%	743.61	149,464.68
Total	**9,835,120.00**	**-**	**2,122,053.80**	**11,957,173.80 ***

*Plus $13,262.85 one-percent administrative fee paid quarterly. Total fee paid over life of loan is $1,061,028.

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 City with full power of substitution in the premises.

Dated: _____, ___.

_____

In the presence of:

_____

M0418779.1

BOND REGISTER

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

Bond Number	Principal Amount	Date of Bond
No. AR-1	$9,835,120	March 23, 2004

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:	Signature of Registrar:
West Virginia Water Development Authority 180 Association Drive Charleston, WV 25311	UNITED BANK, INC. Authorized Representative

WEST VIRGINIA
Water Development Authority
Celebrating 30 Years of Service ***1974 - 2004***

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

CONSENT TO ISSUANCE OF PARITY BONDS

In reliance upon a certificate of Grigoraci, Trainer, Wright & Paterno, certified public accountants stating that the coverage and parity requirements have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the Prior Bonds, hereinafter defined and described, hereby consents to the issuance of the Sewerage System Revenue Bonds, Series 2004 A (the "Bonds"), in the original principal amount of $9,835,120, by The City of Charleston (the "Issuer"), under the terms of the Bond Ordinance authorizing the Bonds, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Sewer Revenue Bonds, Series 1989 A, Sewer Revenue Bonds, Series 1989 C, Sewerage System Revenue Bonds, 1993 Series A, Sewerage System Revenue Bonds, Series 1996 A, Sewerage System Revenue Bonds, Series 1996 B, Sewerage System Revenue Bonds, Series 1997 A, Sewerage System Revenue Bonds, Series 1997 B, Sewerage System Revenue Bonds, 1998 Series A, Sewerage System Revenue Bonds, 1999 Series A, Sewerage System Revenue Bonds, Series 2001 A, Sewerage System Revenue Bonds, 2001 Series B, Sewerage System Refunding Revenue Bonds, Series 2002 A and Sewerage System Refunding Revenue Bonds, Series 2002 B, and senior and prior with respect to liens, pledge and source of and security for payment to the Issuer's Supplemental Sewer Revenue Bonds, Series 1989 B, Supplemental Sewer Revenue Bonds, Series 1989 D, Sewerage System Revenue Bonds, 1999 Series B, and Sewerage System Revenue Bonds, 2001 Series C (collectively, the "Prior Bonds").

WITNESS my signature on this 23rd day of March, 2004.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

Daniel B. Yankoski

Authorized Representative

180 Association Drive, Charleston, WV 25311-1217
phone (304) 558-3612 / fax (304) 558-0299
www.wwda.org

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. RATES
7. INCUMBENCY AND OFFICIAL NAME
8. MEETINGS
9. INSURANCE
10. LOAN AGREEMENT
11. SPECIMEN BOND
12. BOND PROCEEDS
13. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
14. LAND AND RIGHTS-OF-WAY
15. PUBLIC SERVICE COMMISSION ORDER
16. CONFLICTS OF INTEREST
17. PROCUREMENT OF ENGINEERING SERVICES
18. VERIFICATION OF SCHEDULE A
19. CLEAN WATER ACT
20. COUNTERPARTS

We, the undersigned MAYOR and the undersigned CITY CLERK of The City of Charleston in Kanawha County, West Virginia (the "Issuer"), and the undersigned CITY ATTORNEY for the Issuer, hereby certify in connection with The City of Charleston Sewerage System Revenue Bonds, Series 2004 A, numbered AR-1, dated the date hereof, in the principal amount of $9,835,120 (the "Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance duly passed by the Issuer on May 19, 2003, effective June 2, 2003, the Supplemental Resolution duly adopted by the Issuer on March 15, 2004 (collectively, the "Ordinance"), and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection ("DEP"), dated February 25, 2004 (the "Loan Agreement").

2. NO LITIGATION: No controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the authorization, issuance, sale and delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Net Revenues for the Bonds; nor affecting the validity of the Bonds or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the title of the members or officers of the Issuer, the Governing Body, or the Sanitary Board to their respective offices; nor questioning any proceedings of the Issuer taken with respect to the authorization, issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Net Revenues for the Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable and necessary approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect, and competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the Code of West Virginia, 1931, as amended, which bids remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery by the Issuer of the Loan Agreement. The Issuer has met all conditions set forth in the Loan Agreement and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

The Bonds are issued on a parity with the First Lien Bonds, and senior and prior to the Second Lien Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. The Issuer has obtained (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the First Lien Bonds are met; and (ii) the written consent of the registered owners of the Prior Bonds (other than the Series 2002 A Bonds and the Series 2002 B Bonds) to the issuance of the Bonds on a parity with the First Lien Bonds, and senior and prior to the Second Lien Bonds. No written consent is required from the registered owners of the Series 2002 A Bonds and the Series 2002 B Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all the terms and provisions of the Prior Bonds and the Prior Ordinances.

5. SIGNATURES AND DELIVERY: The undersigned Mayor and City Clerk are the duly elected or appointed, qualified and acting officers of the Issuer as indicated by the

official titles opposite their signatures below, and are duly authorized to execute and seal the Bonds for the Issuer. The seal impressed upon the Bonds and this Certificate is the duly authorized, proper and only seal of the Issuer. On the date hereof, the undersigned Mayor did officially sign all of the Bonds, consisting upon original issuance of a single Bond, dated the date hereof, by his manual signature; the undersigned City Clerk did officially cause the seal of the Issuer to be affixed upon the Bonds and to be attested by his manual signature; and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement.

6. RATES: The Issuer has duly enacted a sewer rate ordinance on November 6, 2000, setting forth the rates and charges for the services of the System. The Issuer has complied with all requirements of the Act and the Public Service Commission of West Virginia (the "PSC") to make the rates valid and effective. The time for appeal of such rate ordinance has expired and there has been no appeal thereof and such rates are in full force and effect.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "The City of Charleston." The Issuer is a municipal corporation of the State of West Virginia in Kanawha County of said State. The Governing Body of the Issuer is its Council, consisting of 27 Council members, the Mayor and the City Clerk, all duly elected or appointed, qualified and acting, whose names and dates of commencement and termination of their current terms of office are listed below:

Office	Name	Date Of Commencement Of Office	Date Of Termination Of Office
Mayor	Danny Jones	July 1, 2003	June 30, 2007
City Clerk	James M. Reishman	July 1, 2003	June 30, 2007
Council Member	Patrick Jones	July 1, 2003	June 30, 2007
Council Member	Will Hanna	July 1, 2003	June 30, 2007
Council Member	James "Moses" Lanham	July 1, 2003	June 30, 2007
Council Member	James Ealy	March 15, 2004	June 30, 2007
Council Member	Teresa Reed	July 1, 2003	June 30, 2007
Council Member	Edward Talkington	July 1, 2003	June 30, 2007
Council Member	Paul Monroe	July 1, 2003	June 30, 2007
Council Member	Bob White	July 1, 2003	June 30, 2007
Council Member	Betty Morton	July 1, 2003	June 30, 2007
Council Member	Archie Chestnut	July 1, 2003	June 30, 2007
Council Member	Marc R. Weintraub	July 1, 2003	June 30, 2007
Council Member	Jim Harris, Jr.	July 1, 2003	June 30, 2007

Council Member	Linda M. Nielsen	July 1, 2003	June 30, 2007
Council Member	Jack E. Harrison	July 1, 2003	June 30, 2007
Council Member	David Kent Higgins	July 1, 2003	June 30, 2007
Council Member	Brenda Robertson	July 1, 2003	June 30, 2007
Council Member	Bobby Reishman	July 1, 2003	June 30, 2007
Council Member	John H. Miller, Jr.	July 1, 2003	June 30, 2007
Council Member	Ditty L. Markham	July 1, 2003	June 30, 2007
Council Member	Cheryle M. Hall	July 1, 2003	June 30, 2007
Council Member	Mike Clowser	July 1, 2003	June 30, 2007
Council Member	Mary Jean Davis	July 1, 2003	June 30, 2007
Council Member	Tom Lane	July 1, 2003	June 30, 2007
Council Member	Charles W. Loeb, Jr.	July 1, 2003	June 30, 2007
Council Member	Harry Deitzler	July 1, 2003	June 30, 2007
Council Member	Jerry L. Ware	July 1, 2003	June 30, 2007
Council Member	Mark A. Sadd	July 1, 2003	June 30, 2007

The names of the duly appointed, qualified and acting members of the Sanitary Board of the Issuer are as follows:

Chairman:	Danny Jones, Mayor
Member:	John Tinney
Member:	Sam Bowling, P.E.

The duly appointed and acting City Attorney for the Issuer is Kimberly Weber, Esquire, Charleston, West Virginia. The duly appointed and acting special Public Service Commission counsel to the Issuer is Spilman, Thomas & Battle, PLLC.

8. MEETINGS: All actions, ordinances, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction, operation and financing of the Project or the System were authorized or adopted at meetings of the Governing Body duly and regularly or specifically called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes including Chapter 6, Article 9A of the Code of West Virginia, 1931, as amended, and a quorum of duly elected or appointed, qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. INSURANCE: The Issuer will maintain or, as appropriate, will require all contractors to maintain worker's compensation, public liability and property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Ordinance and the Loan

Agreement. All insurance for the System required by the Ordinance and the Loan Agreement is in full force and effect.

10. LOAN AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not contain any untrue statements of material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the Loan Agreement, which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading; and (iv) the Issuer is in compliance with the Loan Agreement.

11. SPECIMEN BOND: Attached hereto as Exhibit A is a specimen of the Bond which is identical in all respects with the Bond this day delivered to the Authority and being substantially in the form prescribed in the Ordinance.

12. BOND PROCEEDS: On the date hereof, the Issuer received $617,860 from the Authority and the DEP, being a portion of the principal amount of the Bonds and more than a de minimus amount of the proceeds of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer from time to time as acquisition and construction of the Project progresses.

13. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond Ordinance, an abstract thereof, determined by the Governing Body to contain sufficient information as to give notice of the contents thereof, was published once each week for two successive weeks, with not less than six full days between each publication, the first such publication occurring not less than ten days before the date stated below for the public hearing, in The Charleston Gazette and The Charleston Daily Mail, two qualified newspapers published and of general circulation in the Issuer, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Bonds described in the Bond Ordinance, stating that any person interested may appear before the Governing Body at the public hearing held at a public meeting of the Governing Body on June 2, 2003, at 7:00 p.m., prevailing time, in the council chambers of the City Hall in Charleston, West Virginia, and present protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the City Clerk of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing and remains in full force and effect.

14. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase, or, if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds.

15. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the PSC orders entered on May 31, 2002, in Case No. 02-0370-S-PW, and October 10, 2003, in Case No. 03-0437-S-CN, among other things, either granting to the Issuer a certificate of public convenience and necessity for the Project or waiving the certificate, and approving the financing for the Project. The time for appeal of both PSC orders has expired without any appeal. Both orders remain in full force and effect.

16. CONFLICTS OF INTEREST: No member, officer or employee of the Issuer or the Sanitary Board has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Bonds, the Ordinance, and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

17. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied with all the requirements of Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended, in the procurement of the engineering services of the Consulting Engineer.

18. VERIFICATION OF SCHEDULE A: The final amended Schedule A attached to the Certificate of Consulting Engineer, with the signature of the Mayor and the Consulting Engineer, accurately represents the estimated costs of the Project, the sources of funds available to pay the costs of the Project and the costs of financing of the Bonds.

19. CLEAN WATER ACT: The Project as described in the Ordinance complies with Sections 208 and 303(e) of the Clean Water Act.

20. COUNTERPARTS: This Certificate may be executed in counterparts and all counterparts shall be deemed to be the Certificate.

WITNESS our signatures and the official corporate seal of The City of Charleston, West Virginia, on this 23rd day of March, 2004.

[SEAL]

Signature	Official Title
_____	Mayor
_____	City Clerk
_____	City Attorney

EXHIBIT A

See Specimen Bond (Tab No. 15)

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

CERTIFICATE AS TO ARBITRAGE

The undersigned Mayor of The City of Charleston in Kanawha County, West Virginia (the "Issuer"), being the official of the Issuer duly charged with the responsibility for the issuance of $9,835,120 aggregate principal amount of Sewerage System Revenue Bonds, Series 2004 A, of the Issuer, dated March 23, 2004 (the "Bonds"), hereby certifies as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (collectively, the "Code"). I am the officer of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meaning as set forth in the Bond Ordinance duly passed by the Issuer on May 19, 2003, effective June 2, 2003 as supplemented on March 15, 2004 (collectively, the "Bond Ordinance"), authorizing the Bonds.

2. This certificate may be relied upon as the certificate of the Issuer.

3. The Issuer has not been notified by the Internal Revenue Service of any listing or proposed listing of it as an issuer that may not certify its bonds or the certification of which may not be relied upon by holders of obligations of the Issuer or that there is any disqualification of the Issuer by the Internal Revenue Service because a certification made by the Issuer contains a material misrepresentation.

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on March 23, 2004, the date on which the Bonds are to be physically delivered in exchange for more than a de minimis amount of the principal of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. In the Bond Ordinance pursuant to which the Bonds are issued, the Issuer has covenanted that (i) it will restrict the use of the proceeds of the 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 Bonds, so that the Bonds will not constitute "arbitrage bonds" under Section 148 of the Code, 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 Bonds) so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion. The Issuer has, therefore, covenanted to not intentionally use any portion of the proceeds of the Bonds to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except as otherwise allowed under Sections 103 and 148 of the Code.

6. The Bonds were sold on March 23, 2004, to the West Virginia Water Development Authority (the "Authority"), pursuant to a loan agreement dated February 25, 2004, by and among the Issuer, the Authority, and the West Virginia Department of Environmental Protection (the "DEP"), for an aggregate purchase price of $9,835,120 (100% of par value), at which time, the Issuer received $617,860 from the Authority and the DEP, being more than a de minimus amount of the principal of the Bonds. No accrued interest has been or will be paid on the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

7. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) funding a reserve account for the Bonds; and (iii) paying costs of issuance of the Bonds and related costs.

8. The Issuer shall, on the date hereof or immediately hereafter, enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Bonds for the acquisition and construction of the Project, constituting a substantial binding commitment, or has already done so. The acquisition and construction of the Project and the allocation of the net sale proceeds of the Bonds to expenditures of the Project shall commence immediately and proceed with due diligence to completion and, with the exception of proceeds deposited in the reserve account for the Bonds, if any, all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of acquisition and construction of the Project on or before June, 2005. The acquisition and construction of the Project is expected to be completed by March, 2005.

9. The total cost of acquisition and construction of the Project (including all costs of issuance of the Bonds) is $10,649,464. Sources and uses of funds for the Project are as follows:

SOURCES	
Gross Proceeds of the Bonds	$ 9,835,120
Issuer's Funds	$ 814,344
Total Sources	$10,649,464

USES	
Construction of Project	$10,031,604
Capitalized Interest	0
Funded Reserve Account	597,860
Costs of Issuance	20,000
Total Uses	$10,649,464

The total amount of the costs of acquisition and construction of the Project is estimated to be at least equal to the gross proceeds of the Bonds and funds of the Issuer stated above. Except for the proceeds of the Bonds and the funds of the Issuer stated above, no other funds of the Issuer will be available to meet costs of the Project, which would constitute "replacement proceeds" withing the meaning of Treas. Reg. § 1.148-1 (c), inasmuch as (i) the Issuer does not reasonably expect that the term of the Bonds will be longer than is reasonably necessary for the governmental purposes of the Issuer, (ii) the weighted average maturity of the Bonds does not exceed 120% of the average reasonably expected economic life of the Project, and (iii) there are no amounts that have a sufficiently direct nexus to the Bonds or to the governmental purpose of the Bonds to conclude that the amounts would have been used for that governmental purpose if the proceeds of the Bonds were not used or to be used for that governmental purpose.

10. Pursuant to Article IV of the Bond Ordinance, the following special funds or accounts have been created (or continued pursuant to the Prior Ordinances):

(1) Revenue Fund;

(2) Renewal and Replacement Fund;

(3) Series 2004 A Bonds Construction Trust Fund;

(4) Series 2004 A Bonds Sinking Fund;

(5) Series 2004 A Bonds Reserve Account; and

(6) Rebate Fund.

11. Pursuant to Article IV of the Bond Ordinance, the proceeds of the Bonds will be deposited as follows:

(1) Bond proceeds in the amount of $597,860 will be deposited in the Series 2004 A Bonds Reserve Account.

(2) The balance of the proceeds of the Bonds will be deposited in the Series 2004 A Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of acquisition and construction of the Project, including costs of issuance of the Bonds and related costs, and for no other purpose.

The Issuer reasonably expects that (i) at least 85% of the net sale proceeds of the Bonds will be spent on the Project within 3 years from the date of issuance of the Bonds; (2) within 6 months of the date of issuance of the Bonds the Issuer will incur a substantial binding obligation to a third party to expend at least 5% of the net sale proceeds of the Bonds on the Project, and (iii) completion of the Project and allocation of the net sale proceeds of the Bonds to expenditures of the Project will proceed with due diligence. Accordingly, amounts in the Series 2004 A Bonds Construction Trust Fund, if invested, will be invested without yield limitation for a period necessary to complete the Project, not to exceed 3 years. All of such moneys are necessary for such purpose.

Except for "preliminary expenditures" as defined in Treas. Reg. § 1.150-2(f)(2), none of the proceeds of the Bonds will be used to reimburse the Issuer for costs of acquisition and construction of the Project previously incurred and paid by the Issuer with its own funds.

12. Moneys held in the Series 2004 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 2004 A Bonds Reserve Account (if equal to the Series 2004 A Bonds Reserve Requirement) will be withdrawn therefrom, not less than once each year, and, during acquisition and construction of the Project, deposited into the Series 2004 A Bonds Construction Trust Fund, and following completion of the Project, will be deposited in the Series 2004 A Bonds Sinking Fund, and such amounts will be applied as set forth in the Bond Ordinance.

13. Except for the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account, there are no other funds or accounts established or held by the Issuer which are reasonably expected to be used to pay debt service on the Bonds, or which are pledged as collateral for the Bonds and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Bonds, if the Issuer encounters financial difficulties. The Issuer does not expect that moneys in the Renewal and Replacement Fund will be used or needed for payments upon the Bonds, and because such amounts may be

expended for other purposes, there is no reasonable assurance that such amounts would be available to meet debt service if the Issuer encounters financial difficulties; thus, such amounts may be invested without yield limitation. Except as provided herein, no funds which have been or will be used to acquire directly or indirectly securities, obligations, annuity contracts, investment-type property or any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved desegregation plan or other investment property producing a yield in excess of the yield on the Bonds, have been or will be pledged to payment of the Bonds. Less than 10% of the stated principal amount of the Bonds, if any, will be deposited in the Series 2004 A Bonds Reserve Account or any other reserve or replacement fund. The amounts deposited in the Series 2004 A Bonds Reserve Account from time to time by the Issuer will not exceed the maximum annual principal and interest on the Bonds and will not exceed 125% of average annual principal and interest on the Bonds. Amounts in the Series 2004 A Bonds Reserve Account, not to exceed 10% of the proceeds of the Bonds, if invested, will be invested without yield limitation. The establishment of the Series 2004 A Bonds Reserve Account is required by the Authority, is vital to its purchase of the Bonds and is reasonably required to assure payments of debt service on the Bonds.

14. Not later than simultaneously with the delivery of the Bonds, the Issuer shall enter into a contract for the acquisition and construction of the Project, and the amount to be expended pursuant to such contract exceeds 5% of the net sale proceeds of the Bonds.

15. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 12 months of the date hereof.

16. The Issuer will comply with the provisions of the Code, for which the effective date precedes the date of delivery of the Bonds to the Authority.

17. With the exception of the amount deposited in the Series 2004 A Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 15 months from the date of issuance thereof.

18. The Series 2004 A Bonds Sinking Fund (other than the Series 2004 A Bonds Reserve Account therein) is intended primarily to achieve a proper matching of payments of debt service on the Bonds each year. The Series 2004 A Bonds Sinking Fund (other than the Series 2004 A Bonds Reserve Account therein) will be depleted at least once a year, except for a reasonable carryover amount not in excess of the greater of 1/12th of annual debt service on the Bonds or 1 year's interest earnings on the Series 2004 A Bonds Sinking Fund (other than the Series 2004 A Bonds Reserve Account therein). Except as otherwise allowed, any money deposited in the Series 2004 A Bonds Sinking Fund for payment

of the principal of or interest on the Bonds (other than the Series 2004 A Bonds Reserve Account therein) will be spent within a 13-month period beginning on the date of receipt and will be invested without yield limitation, and any moneys received from the investment of amounts held in the Series 2004 A Bonds Sinking Fund (other than in the Series 2004 A Bonds Reserve Account therein) will be spent within a 1-year period beginning on the date of receipt.

19. The amount designated as cost of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

20. All property financed with the proceeds of the Bonds will be held for federal income tax purposes by (or on behalf of) a qualified governmental unit.

21. No more than 10% of the proceeds of the Bonds will be used (directly or indirectly) in any trade or business carried on by, and less than 5% of the proceeds of the Bonds or $5,000,000 have been or will be used to make or finance loans to, any person who is not a governmental unit.

22. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

23. The Issuer shall use the proceeds of the Bonds solely for the costs of acquisition and construction of the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

24. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from treatment afforded by Section 103(a) of the Code by reason of classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and the Regulations promulgated or to be promulgated thereunder in order to assure that the interest on the Bonds is excluded from gross income for federal income tax purposes.

25. The Bonds are not and will not be, in whole or part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

26. The Issuer will rebate to the United States the amount, if any, required by the Code and take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay the required rebate amount and any and all penalties and other amounts from lawfully available sources, and obtain a waiver from the Internal Revenue Service in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

27. The Issuer has retained the right to amend the Bond Ordinance authorizing the issuance of the Bonds if such amendment is necessary to assure compliance with Section 148(f) of the Code or as may otherwise be necessary to assure the exclusion of interest on the Bonds from gross income for federal income tax purposes.

28. The Issuer shall comply with the yield restriction on the proceeds of the Bonds as set forth in the Code.

29. The Issuer has either (a) funded the Series 2004 A Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Series 2004 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until the Series 2004 A Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Series 2004 A Bonds Reserve Account and the Series 2004 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

30. The Issuer shall submit to the Authority within 15 days following the end of each bond year a certified copy of its rebate calculation and a certificate with respect thereto or, if the Issuer qualifies for the small governmental issuer exception to rebate, or any other exception thereto, then the Issuer shall submit to the Authority a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the bond year which would make the Bonds subject to rebate.

31. The Issuer expects that no part of the Project financed by the Bonds will be sold or otherwise disposed of prior to the last maturity date of the Bonds.

32. The Issuer covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bonds and the interest thereon. In addition, the Issuer has covenanted to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to fully comply with Section 148(f) of the Code and has covenanted to take such actions, or refrain from taking such actions, as may be necessary to fully comply with Section 148(f) of the Code and the Regulations, regardless of whether such actions may be contrary to any of the provisions of the Bond Ordinance authorizing issuance of the Bonds.

33. The Issuer shall at all times take, and refrain from taking, and shall not fail to take, any and all actions necessary in order to assure the initial and continued tax-exempt

status of the Bonds and the interest thereon. Less than 10% of the proceeds of the Bonds will be used, directly or indirectly, for any private business use, and less than 10% of the payment of principal of, or the interest on, such issue, under the terms of such issue or any underlying arrangement, is, directly or indirectly, secured by any interest in property used or to be used for a private business use, or payments in respect of such property, or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Bonds will be used, directly or indirectly, for any private business use which is not related to the governmental use of the proceeds of the Bonds, including the disproportionate related business use of the proceeds of the Bonds, and none of the payment of principal of, or the interest on, such issue, under the terms of any underlying arrangement, is, directly or indirectly, secured by any interest in property used, or to be used for a private business use, payments in respect of such property or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use with respect to such private business use, which is not related to any government use of such proceeds, including the disproportionate business use of the issue of the Bonds. None of the proceeds of the issue of the Bonds will be used, directly or indirectly, to make or finance loans to persons other than governmental units. For purposes of this paragraph, private business use means use, directly or indirectly, in a trade or business carried on by any person, including related persons, other than a governmental unit or other than use as a member of the general public. All of the foregoing shall be determined in accordance with and within the meaning of the Internal Revenue Code of 1986, as amended, including any successor provisions and rules and regulations thereunder (the "Code").

34. The Bonds are a fixed yield issue. No interest or other amount payable on the Bonds (other than in the event of an unanticipated contingency) is determined by reference to (or by reference to an index that reflects) market interest rates or stock or commodity prices after the date of issue.

35. None of the Bonds has a yield-to-maturity more than one-fourth of one percent higher than the yield on the Bonds determined by assuming the Bonds are retired on the date that when used in computing the yield on the Bonds produces the lowest yield.

36. No portion of the proceeds of the Bonds will be used, directly or indirectly, to replace funds which were used, directly or indirectly, to acquire higher yielding investments, all within the meaning of Section 148 of the Code.

37. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with the Bonds and (c) will be paid out of substantially the same source of

funds or will have substantially the same claim to be paid out of substantially the same source of funds as the Bonds.

38. The transaction contemplated herein does not represent an exploitation of the difference between taxable and tax-exempt interest rates and the execution and delivery of the Bonds is not occurring sooner than otherwise necessary, nor are the Bonds in principal amounts greater than otherwise necessary or to be outstanding longer than otherwise necessary.

39. On the basis of the foregoing, it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

40. On the date hereof, the undersigned Mayor did officially execute a properly completed IRS Form 8038-G in connection with the Bonds and will cause such executed IRS Form 8038-G to be filed in a timely manner pursuant to Section 149(e) of the Code with the applicable Internal Revenue Service Center. The information contained in such executed Form 8038-G is true, correct and complete.

41. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

42. Jackson Kelly PLLC is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Bonds.

43. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

WITNESS my signature on this 23rd day of March, 2004.

THE CITY OF CHARLESTON

Mayor

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

CERTIFICATE OF CITY CLERK AS TO TRUTH
AND ACCURACY OF DOCUMENTS DELIVERED

The undersigned duly elected City Clerk of The City of Charleston, West Virginia (the "Issuer"), hereby certifies that the copies of the following documents being delivered in connection with the closing of the sale of The City of Charleston Sewerage System Revenue Bonds, Series 2004 A (the "Bonds") are, as of the date hereof, true, complete and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, that said documents have been duly adopted, enacted or entered by the Council of the Issuer, and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

1. Charter.

2. Oaths of Office of Mayor, City Clerk and Council Members.

3. Ordinance Creating Sanitary Board.

4. Oaths of Office of Sanitary Board Members.

5. Public Service Commission Order.

6. Infrastructure Council Approval Letter.

7. Loan Agreement.

8. Rate Ordinance.

9. Minutes of Council Meetings regarding All Readings and Public Hearing of the Rate Ordinance.

10. Affidavit of Publication of the Rate Ordinance and Notice of Public Hearing.

11. Petition of Sanitary Board.

12. Bond Ordinance.

13. Supplemental Resolution.

14. Minutes of Council Meetings regarding All Readings and Public Hearing of the Bond Ordinance and Adoption of the Supplemental Resolution.

15. Affidavit of Publication of the Notice of Public Hearing and Abstract of Bond Ordinance.

16 WDA Consent to Issuance of Parity Bonds.

17. NPDES Permit.

18. Evidence of Insurance.

[The rest of this page is intentionally left blank.]

WITNESS my signature and the official seal of The City of Charleston, West Virginia, on this 23rd day of March, 2004.

City Clerk

[SEAL]

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

CERTIFICATE OF CONSULTING ENGINEER

I, Harvey A. McCallister, Jr., Registered Professional Engineer, West Virginia License No. 7201, of HNTB Corporation, Consulting Engineer, Scott Depot, West Virginia, hereby certify as follows:

1. My firm is the engineer for the planning, design, acquisition and construction of certain additions, betterments and improvements (the "Project") to the existing sewerage system (the "System") of The City of Charleston (the "Issuer"), to be constructed primarily in Kanawha County, West Virginia, which acquisition and construction are being permanently financed by the above-captioned bonds (the "Bonds") of the Issuer. All capitalized words used herein and not defined herein shall have the same meaning set forth in the Bond Ordinance passed by the Issuer on May 19, 2003, effective June 2, 2003, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection ("DEP"), dated February 25, 2004 (the "Loan Agreement").

2. The Bonds are being issued for the purposes of (i) paying the costs of acquisition and construction of the Project; (ii) funding a reserve account for the Bonds; and (iii) paying costs of issuance and related costs.

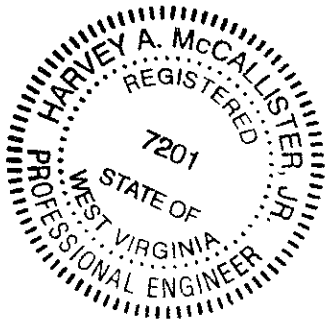
3. To the best of my knowledge, information and belief (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 25 years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule A attached hereto as Exhibit A, all successful bidders have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the

bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) in reliance upon the certificate of Grigoraci, Trainer, Wright & Paterno, Certified Public Accountants, of even date herewith, as of the effective date thereof, the rates and charges for the System as enacted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project, Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this 23rd day of March, 2004.

HNTB CORPORATION

[SEAL]



Harvey A. McCallister, Jr., P.E.
West Virginia License No. 7201

SCHEDULE A

NAME OF GOVERNMENTAL AGENCY: Charleston Sanitary Board

ESTIMATED TOTAL COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING

	A. Cost of Project		
1	Construction	$8,499,147.00	
2	Technical Services	$757,500.00	
3	Legal and Fiscal	$0.00	
4	Administrative	$0.00	
5	Site and Other Lands	$350,000.00	
6	Fac. Plan/Design or Other		
	Loan Repayment (Specify Type:)	$0.00	
7	Interim Financing Costs	$0.00	
8	Contingency	$424,957.00	
9	Miscellaneous	$0.00	
10	Total of Lines 1 Through 9		$10,031,604.00
	B. Sources of Funds		
11	Federal Grants:1	$0.00	
	(Specify Sources)	$0.00	
12	State Grants: 1	$0.00	
	(Specify Sources)	$0.00	
13	Other Grants: 1	$0.00	
	(Specify Sources)	$0.00	
14	Any Other Source: 2 CSB Contribution	$814,344.00	
15	Total of Lines 11 Through 14		$814,344.00
16	Net Proceeds Required from Bond Issue (Line 10 minus Line 15)		$9,217,260.00
	C. Cost of Financing		
17	Bond Counsel	$20,000.00	
18	Funded Reserve Account3	$597,860.00	
19	Total Cost of Financing (Line 17 plus Line 18)		$617,860.00
20	Size of Bond Issue (Line 16 plus Line 19)		$9,835,120.00

* not allowable for State Revolving Fund Assistance

** WDA loans associated with EPA grants are not allowable

Signature of Governmental Agency

Date March 16, 2004

Signature of Consulting Engineer

Date

M0362743.1

SCHEDULE A

NAME OF GOVERNMENTAL AGENCY: Charleston Sanitary Board

ESTIMATED TOTAL COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING

	A. Cost of Project		
1	Construction	$8,499,147.00	
2	Technical Services	$757,500.00	
3	Legal and Fiscal	$0.00	
4	Administrative	$0.00	
5	Site and Other Lands	$350,000.00	
6	Fac. Plan/Design or Other		
	Loan Repayment (Specify Type: _____)	$0.00	
7	Interim Financing Costs	$0.00	
8	Contingency	$424,957.00	
9	Miscellaneous	$0.00	
10	Total of Lines 1 Through 9		$10,031,604.00
	B. Sources of Funds		
11	Federal Grants:1 _____	$0.00	
	(Specify Sources) _____	$0.00	
12	State Grants: 1 _____	$0.00	
	(Specify Sources) _____	$0.00	
13	Other Grants: 1 _____	$0.00	
	(Specify Sources) _____	$0.00	
14	Any Other Source: 2 CSB Contribution	$814,344.00	
15	Total of Lines 11 Through 14		$814,344.00
16	Net Proceeds Required from Bond Issue (Line 10 minus Line 15)		$9,217,260.00
	C. Cost of Financing		
17	Bond Counsel	$20,000.00	
18	Funded Reserve Account3	$597,860.00	
19	Total Cost of Financing (Line 17 plus Line 18)		$617,860.00
20	Size of Bond Issue (Line 16 plus Line 19)		$9,835,120.00

* not allowable for State Revolving Fund Assistance
** WDA loans associated with EPA grants are not allowable

Signature of Governmental Agency

Date _____

Signature of Consulting Engineer

Date March 16 2004

M0362743.1

G T & W P

GRIGORACI, TRAINER, WRIGHT & PATERNO

CERTIFIED PUBLIC ACCOUNTANTS & CONSULTANTS

(A PARTNERSHIP OF ACCOUNTING CORPORATIONS)

608 TENNESSEE AVENUE

P. O. BOX 1191
CHARLESTON, WV 25324
(304) 343-5511
FAX: (304) 343-5514

March 23, 2004

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

Ladies and Gentlemen:

We have reviewed the sewer service rates of The City of Charleston (the "Issuer"), enacted by the Issuer on November 6, 2000, and the projected operating expenses and anticipated customer usage provided by the Charleston Sanitary Board. It is our opinion that such rates are adequate (i) to provide for all operating expenses of the sewerage system of the Issuer (the "System"), and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for the payment of principal of and interest on the Issuer's Sewerage System Revenue Bonds, Series 2004 A (the "Series 2004 A Bonds") and all other obligations secured by or payable from revenues of the System on a parity with or junior to the Series 2004 A Bonds, including the Issuer's Sewer Revenue Bonds, Series 1989 A, Sewer Revenue Bonds, Series 1989 C, Sewerage System Revenue Bonds, 1993 Series A, Sewerage System Revenue Bonds, Series 1996 A, Sewerage System Revenue Bonds, Series 1996 B, Sewerage System Revenue Bonds, Series 1997 A, Sewerage System Revenue Bonds, Series 1997 B, Sewerage System Revenue Bonds, 1998 Series A, Sewerage System Revenue Bonds, 1999 Series A, Sewerage System Revenue Bonds, Series 2001 A, Sewerage System Revenue Bonds, 2001 Series B, Sewerage System Refunding Revenue Bonds, Series 2002 A, Sewerage System Refunding Revenue Bonds, Series 2002 B, Supplemental Sewer Revenue Bonds, Series 1989 B, Supplemental Sewer Revenue Bonds, Series 1989 D, Sewerage System Revenue Bonds, 1999 Series B and Sewerage System Revenue Bonds, 2001 Series C (collectively, the "Prior Bonds").

It is further our opinion that the Net Revenues actually derived from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Series 2004 A Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Series 2004 A Bonds, will not be less than 115% of the maximum annual amount which will mature and become due in any succeeding year for principal of and interest on the Prior Bonds and the Series 2004 A Bonds.

Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance authorizing the Series 2004 A Bonds.

Very truly yours,

Bryan Tracy Wright & Pattino

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

3.6

RECEIPT FOR BONDS

The undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, hereby certifies as follows:

1. On the 23rd day of March, 2004, in Charleston, West Virginia, the Authority received the entire original issue of $9,835,120 in aggregate principal amount of the Sewerage System Revenue Bonds, Series 2004 A, of The City of Charleston (the "Issuer"), dated March 23, 2004, issued in the form of one bond, fully registered to the Authority, and numbered AR-1 (the "Bonds").

2. At the time of such receipt of the Bonds, they had been executed by the Mayor of the Issuer and attested by the City Clerk of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been impressed upon the Bonds.

WITNESS my signature on this 23rd day of March, 2004.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

Barbara B Meadows
Authorized Representative

M0362749.1

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

3.7

RECEIPT FOR BOND PROCEEDS

The undersigned Mayor of The City of Charleston (the "Issuer"), for and on behalf of the Issuer, hereby certifies as follows:

On the 23rd day of March, 2004, the Issuer received and hereby acknowledges receipt from the West Virginia Water Development Authority (the "Authority"), as the original purchaser of the $9,835,120 The City of Charleston Sewerage System Revenue Bonds, Series 2004 A, dated March 23, 2004 (the "Bonds"), of $617,860, being a portion of the principal amount of the Bonds. The Issuer understands that the remaining proceeds of the Bonds will be advanced to the Issuer from time to time as construction proceeds to completion.

WITNESS my signature on this 23rd day of March, 2004.

THE CITY OF CHARLESTON

Mayor

M0362752.1

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

REQUEST AND AUTHORIZATION TO
AUTHENTICATE AND DELIVER THE BONDS

United Bank, Inc., as Registrar
Charleston, West Virginia

Ladies and Gentlemen:

We herewith hand to you, duly executed, the $9,835,120 Sewerage System Revenue Bonds, Series 2004 A, in the form of one bond, numbered AR-1, dated March 23, 2004 (the "Bonds"), of The City of Charleston, West Virginia (the "Issuer"), authorized to be issued under and pursuant to a Bond Ordinance duly passed by the Issuer on May 19, 2003, effective June 2, 2003, and a Supplemental Resolution duly adopted by the Issuer on March 15, 2004.

You are hereby requested and authorized to register, authenticate and deliver the Bonds on behalf of the Issuer to the West Virginia Water Development Authority.

WITNESS my signature this 23rd day of March, 2004.

THE CITY OF CHARLESTON

Mayor

(SEAL)

Attest:

City Clerk

M0362753.1

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 23rd day of March, 2004, by and between THE CITY OF CHARLESTON, WEST VIRGINIA, a municipal corporation (the "Issuer"), and UNITED BANK, INC., Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its $9,835,120 Sewerage System Revenue Bonds, Series 2004 A (the "Bonds"), in the form of one bond, numbered AR-1, in fully registered form, pursuant to a Bond Ordinance duly passed by the Issuer on May 19, 2003, effective June 2, 2003, and a Supplemental Resolution duly adopted March 15, 2004 (collectively, the "Ordinance");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Ordinance, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Ordinance provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Ordinance and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Ordinance and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exclusion of interest, if any, 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 the compensation for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Ordinance with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Ordinance, the terms of the Ordinance shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Ordinance will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective address:

ISSUER:

The City of Charleston
P.O. Box 2749
Charleston, WV 25330
Attention: Mayor

REGISTRAR:

United Bank, Inc.
P.O. Box 393
Charleston, WV 25322
Attention: Corporate Trust Department

The Issuer and the Registrar shall notify the other in writing of any change of address.

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Ordinance.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the date first above-written.

THE CITY OF CHARLESTON

_____

Mayor

UNITED BANK, INC.

_____

Authorized Officer

The Issuer and the Registrar shall notify the other in writing of any change of address.

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Ordinance.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the date first above-written.

THE CITY OF CHARLESTON

_____

Mayor

UNITED BANK, INC.

Kathy Smith

Authorized Officer

EXHIBIT A

See Bond Ordinance (Tab No. 11)
See Supplemental Resolution (Tab No. 12)

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

3.10

CERTIFICATE OF REGISTRATION OF BONDS

UNITED BANK, INC., Charleston, West Virginia, as Registrar (the "Registrar"), hereby certifies that on the date hereof, the single, fully registered Sewerage System Revenue Bonds, Series 2004 A, of The City of Charleston, West Virginia (the "Issuer"), dated March 23, 2004, in the principal amount of $9,835,120, and numbered AR-1, was registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature on this 23rd day of March, 2004.

UNITED BANK, INC., as Registrar

Kathy Smith

Authorized Officer

M0362760.1

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2004 A

3.11

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

BANK ONE, NA, Charleston, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of The City of Charleston, West Virginia (the "Issuer"), passed by the Issuer on May 19, 2003, effective June 2, 2003, and a Supplemental Resolution adopted by the Issuer on March 15, 2004 (collectively, the "Ordinance"), authorizing the issuance of The City of Charleston Sewerage System Revenue Bonds, Series 2004 A, in the aggregate principal amount of $9,835,120, dated March 23, 2004, and agrees to serve as Depository Bank for the Revenue Fund all as set forth in the Ordinance.

WITNESS my signature on this 23rd day of March, 2004.

BANK ONE, NA

Authorized Officer

WEST VIRGINIA MUNICIPAL BOND COMMISSION
Suite 500
8 Capitol Street, Charleston, WV 25301
(304) 558-3971

NEW ISSUE REPORT FORM
Date of Report: March 23, 2004

ISSUE: The City of Charleston Sewerage System Revenue Bonds, Series 2004 A

ADDRESS: P.O. Box 2749, Charleston, WV 25330 COUNTY: Kanawha

PURPOSE OF ISSUE: New Money X
Refunding ___ Refunds issue(s) dated: _____

ISSUE DATE: March 23, 2004 CLOSING DATE: March 23, 2004

ISSUE AMOUNT: $9,835,120 RATE: 2%; Administrative Fee: 1%

1st DEBT SERVICE DUE: September 1, 2005 1st PRINCIPAL DUE: September 1, 2005

1st DEBT SERVICE AMOUNT: $149,464.67 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC
Contact Person: Samme L. Gee, Esquire
Phone: (304) 340-1318

UNDERWRITERS COUNSEL: _____
Contact Person: _____
Phone: _____

CLOSING BANK: Bank One, NA
Contact Person: John T. Copenhaver
Phone: (304) 348-4413

ESCROW TRUSTEE: _____
Contact Person: _____
Phone: _____

KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: Bill Collison
Position: Finance Manager
Phone: (304) 348-1084

OTHER: WVDEP
Contact Person: Rosalie Brodersen
Function: Program Manager
Phone: (304) 558-0637

DEPOSITS TO MBC AT CLOSE: _____
By ___ Wire
X Check

Accrued Interest: $_____
Capitalized Interest: $_____
X Reserve Account: $597,860
Other: _____ $_____

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

To Escrow Trustee: $_____
To Issuer: $_____
To Cons.Invest.Fund $_____
To Other: _____ $_____

NOTES: _____

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: _____
Transfers Required: _____

Division of Water Resources
1201 Greenbrier Street
Charleston, West Virginia 25311
Phone (304) 558-4086
Fax (304) 558-5903

West Virginia Department of Environmental Protection

Bob Wise
Governor

Michael O. Callaghan
Secretary

June 07, 2002

KATHY RUSHWORTH, GEN. MGR.
CHARLESTON CITY OF
SANITARY BOARD
PO BOX 1026
CHARLESTON, WV 25324

CERTIFIED RETURN RECEIPT REQUESTED

Dear Permittee:

Enclosed please find WV/NPDES Permit Number WV0023205 dated June 07, 2002.

In response to correspondence, dated February 5, 2002, from Spillman Thomas & Battle, presenting comments on behalf of the City, on the draft WV/NPDES Water Pollution Control Permit, the succeeding meeting, on March 21, 2002, and subsequent discussions relative to the materials, we present the following. This response has, been categorized, and comments have been addressed, with reference to presentation in the draft WV/NPDES Water Pollution Control Permit, and in numerical order of, the specific concern.

Comment No. 1 : Fact Sheet

As discussed in the meeting, on March 21, 2002, the Fact Sheet is a supporting document to the draft Permit preparation. The draft Permit may be revised to address concerns raised on Fact Sheet data, however, the Fact Sheet would not be subject to revision. Therefore, the comments presented in Section 1 will be addressed in the Permit revisions, accordingly.

Comment No. 2 : a. Plate Press to Supplement the Preliminary Treatment

The final Permit has been revised to incorporate the appropriate revision.

Comment No. 2 : b. Septage Receiving Station

The final Permit has been revised to incorporate the appropriate revision.

Comment No. 2 : c. Anaerobic Digester Data

The final Permit has been revised to incorporate the appropriate revision.

Comment No. 2 : d. CSO Outlet Nos. 012 and 027

The final Permit has been revised to incorporate the appropriate revision.

Comment No. 2 : e. CSO Outlet No. 037

JACKSONKELLY
ATTORNEYS AT LAW PLLC

1600 LAIDLEY TOWER • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
www.jacksonkelly.com

DIRECT NO. (304) 340-1318 EMAIL: sgee@jacksonkelly.com FAX NO. (304) 340-1080 OR 1040

March 23, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 3.14

Internal Revenue Service
Internal Revenue Service Center
Ogden, Utah 84201

Re: The City of Charleston
Sewerage System Revenue Bonds, Series 2004 A

Ladies and Gentlemen:

Enclosed herewith is a completed and executed Internal Revenue Service Form 8038-G and a file copy thereof with regard to the above-captioned issue. Please file the original form in the appropriate Internal Revenue Service records and return the copy marked in red as the "File Copy" to me (after acknowledging receipt of the same) in the enclosed self-addressed, stamped envelope.

Thank you for your attention to this matter.

Very truly yours,

Samme L. Gee

SLG/lp

Enclosure

cc: Bill Collison *(w/ enc.)*

Form **8038-G** (Rev. November 2000) Department of the Treasury Internal Revenue Service

Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)

▶ See separate Instructions.

Caution: *If the issue price is under $100,000, use Form 8038-GC.*

OMB No. 1545-0720

Part I Reporting Authority

If Amended Return, check here ▶ ☐

1	Issuer's name: The City of Charleston	2	Issuer's employer identification number: 55 6000160
3	Number and street (or P.O. box if mail is not delivered to street address): 501 Virginia Street East	Room/suite	4 Report number: 3 2004-1
5	City, town, or post office, state, and ZIP code: Charleston, West Virginia 25301	6	Date of issue: March 23, 2004
7	Name of issue: Sewerage System Revnue Bonds, Series 2004 A	8	CUSIP number: N/A
9	Name and title of officer or legal representative whom the IRS may call for more information: Samme L. Gee, Esquire	10	Telephone number of officer or legal representative: (304) 340-1318

Part II Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule

11	☐ Education	11	
12	☐ Health and hospital	12	
13	☐ Transportation	13	
14	☐ Public safety	14	
15	☑ Environment (including sewage bonds)	15	9,835,120
16	☐ Housing	16	
17	☐ Utilities	17	
18	☐ Other. Describe ▶	18	
19	If obligations are TANs or RANs, check box ▶ ☐ If obligations are BANs, check box ▶ ☐		
20	If obligations are in the form of a lease or installment sale, check box ▶ ☐		

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	June 1, 2025	$ 9,835,120	$ 9,835,120	11.977 years	2.0082861 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22	Proceeds used for accrued interest			22	0
23	Issue price of entire issue (enter amount from line 21, column (b))			23	9,835,120
24	Proceeds used for bond issuance costs (including underwriters' discount)	24	20,000		
25	Proceeds used for credit enhancement	25	0		
26	Proceeds allocated to reasonably required reserve or replacement fund	26	597,860		
27	Proceeds used to currently refund prior issues	27	0		
28	Proceeds used to advance refund prior issues	28	0		
29	Total (add lines 24 through 28)			29	617,860
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)			30	9,217,260

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)

31 Enter the remaining weighted average maturity of the bonds to be currently refunded ▶ N/A years

32 Enter the remaining weighted average maturity of the bonds to be advance refunded ▶ years

33 Enter the last date on which the refunded bonds will be called ▶

34 Enter the date(s) the refunded bonds were issued ▶

Part VI Miscellaneous

35	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35	
36a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	
b	Enter the final maturity date of the guaranteed investment contract ▶		
37	Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a	

b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☐ and enter the name of the issuer ▶ and the date of the issue ▶

38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ▶ ☐

39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶ ☐

40 If the issuer has identified a hedge, check box ▶ ☐

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

▶ Signature of issuer's authorized representative — Date: March 23, 2004 ▶ Danny Jones, Mayor — Type or print name and title

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID AH
CHARL-2

DATE (MM/DD/YYYY) 03/22/04

PRODUCER

Commercial Insurance Services
340 MacCorkle Ave. Ste #200
Charleston WV 25314
Phone:304-345-8000 Fax:304-345-8014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: United National Ins. Group	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

INSURED

City Of Charleston
P. O. Box 2749
Charleston WV 25330

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC	CP0065410	03/31/03	03/31/04	EACH OCCURRENCE	$ 1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurence)	$
						MED EXP (Any one person)	$ 5,000
						PERSONAL & ADV INJURY	$
						GENERAL AGGREGATE	$
						PRODUCTS - COMP/OP AGG	$
A		AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS	CP0065410	03/31/03	03/31/04	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
						BODILY INJURY (Per person)	$
						BODILY INJURY (Per accident)	$
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT	$
						OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS/UMBRELLA LIABILITY OCCUR CLAIMS MADE DEDUCTIBLE RETENTION $				EACH OCCURRENCE	$
						AGGREGATE	$
							$
							$
							$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	CP0065410	03/31/03	03/31/04	X WC STATU-TORY LIMITS / OTH-ER	
						E.L. EACH ACCIDENT	$ 1,000,000
						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	$ 1,000,000
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Re: Treatment Plant Upgrade Phase I, Project #C544189

CERTIFICATE HOLDER

WVDEP-3

WV DEP State Revolving
Loan Fund SRF Loan Program
1560 Kanawha Blvd E
Charleston WV 25311

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

©ACORD CORPORATION 1988

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

CLOSING MEMORANDUM

3.16

To: **Bill Collison**
Rosalie Brodersen
John Tingley
Barbara Meadows
Sara Boardman
Samme Gee

From: **Francesca Tan**

Date: **March 23, 2004**

Re: **The City of Charleston Sewerage System Revenue Bonds, Series 2004 A**

1. DISBURSEMENTS TO CITY

Payor:	West Virginia Department of Environmental Protection
Source:	Series 2004 A Bonds Proceeds
Amount:	$617,860
Date:	March 23, 2004
Form:	Check
Payee:	The City of Charleston
Bank:	Bank One, NA
Account:	Series 2004 A Bonds Construction Trust Fund

2. DISBURSEMENTS TO MUNICIPAL BOND COMMISSION

Payor:	The City of Charleston
Source:	Series 2004 A Bonds Proceeds
Amount:	$597,860
Date:	March 23, 2004
Form:	Check
Payee:	West Virginia Municipal Bond Commission
Account:	Series 2004 A Bonds Reserve Account

3. DISBURSEMENTS TO JACKSON KELLY PLLC

Payor:	The City of Charleston
Source:	Series 2004 A Bonds Proceeds
Amount:	$20,000
Form:	Check
Payee:	Jackson Kelly PLLC
Purpose:	Bond Counsel fees and expenses

JACKSONKELLY
ATTORNEYS AT LAW PLLC
1600 LAIDLEY TOWER • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
www.jacksonkelly.com

March 23, 2004

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: The City of Charleston
Sewerage System Revenue Bonds, Series 2004 A

Ladies and Gentlemen:

We have served as bond counsel to The City of Charleston ("the Issuer"), a municipal corporation, in connection with the issuance of its Sewerage System Revenue Bonds, Series 2004 A, dated the date hereof (the "Bonds").

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a loan agreement for the Bonds dated February 25, 2004, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are issued in the principal amount of $9,835,120, in the form of one bond, registered as to principal and interest to the Authority, with interest at the rate of 2% per annum, and with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing September 1, 2005, all as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds are subject to the SRF Administrative Fee equal to 1% of the principal amount of the Bonds as set forth in the Schedule Y attached to the Loan Agreement.

M0362800.1

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), for the purposes of (i) paying the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) funding a reserve account for the Bonds; and (iii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and a Bond Ordinance duly passed by the Issuer on May 19, 2003, effective June 2, 2003, as supplemented by a Supplemental Resolution duly adopted by the Issuer on March 15, 2004 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued, and the Loan Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance and in the Loan Agreement when used herein.

In connection with the issuance of the Bonds, the Issuer has executed a Certificate as to Arbitrage, dated as of the date hereof (the "Certificate as to Arbitrage"), which, among other things, sets forth restrictions on the investment and expenditure of the Bond proceeds and earnings thereon, to ensure that the arbitrage requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code"), necessary to establish and maintain the excludability of interest on the Bonds from gross income for federal income tax purposes, are and will continue to be met.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to enact the Ordinance and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof.

3. The Loan Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

4. The Issuer has legally and effectively enacted the Ordinance and adopted all other necessary resolutions in connection with the issuance and sale of the Bonds. The Ordinance constitutes a valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's First Lien Bonds and senior to the Issuer's Second Lien Bonds, all in accordance with the terms of the Bonds and the Ordinance.

6. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Bonds (a) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to the Code and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations under the Code. It should be noted, however, that interest on the Bonds is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code that must be satisfied subsequent to issuance of the Bonds for interest thereon to be and continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Bonds set forth

in the Bond Legislation and the Certificate as to Arbitrage, and other certificates delivered in connection with the issuance of the Bonds. The Issuer has covenanted to comply with all such requirements. Failure to comply with certain of such Code requirements or such certifications, covenants and representations could cause the interest on the Bonds to be includable in gross income retroactive to the date of issuance of the Bonds.

7. Under the Act, the Bonds and any interest thereon are exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

No opinion is given herein as to the effect upon enforceability of the Bonds under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or in the exercise of judicial discretion or principles of equity in appropriate cases.

We have examined the executed and authenticated Bond numbered AR-1 and in our opinion, the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

Jackson Kelly PLLC

CITY OF CHARLESTON
P.O. BOX 2749
CHARLESTON, WEST VIRGINIA 25330

March 23, 2004

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Jackson Kelly PLLC
P. O. Box 553
Charleston, WV 25322

Re: The City of Charleston
Sewerage System Revenue Bonds, Series 2004 A

Ladies and Gentlemen:

I am City Attorney for The City of Charleston in Kanawha County, West Virginia (the "Issuer"). As such City Attorney, I have examined copies of the approving opinion of Jackson Kelly PLLC, as bond counsel, relating to the above-captioned bonds of the Issuer (the "Bonds"), a loan agreement for the Bonds, dated February 25, 2004, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), a Bond Ordinance duly passed by the Issuer on May 19, 2003, effective June 2, 2003, as supplemented by a Supplemental Resolution duly adopted by the Issuer on March 15, 2004 (collectively, the "Ordinance"), a Petition of the Sanitary Board duly adopted on April 24, 2003, and other documents relating to the Bonds. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Loan Agreement and the Ordinance when used herein.

I am of the opinion that:

1. The Issuer is a duly organized and presently existing municipal

corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System and to enact the Ordinance, all under the Act and other applicable provisions of law. The Sanitary Board has been duly created by the Issuer and is presently existing as a sanitary board under the Act.

2. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the DEP and the Authority, constitutes a valid and binding agreement of the Issuer, enforceable in accordance with its terms.

3. The Mayor, City Clerk and members of the Council and the Sanitary Board of the Issuer have been duly, lawfully and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.

4. The Ordinance has been duly adopted and enacted by the Issuer and is in full force and effect.

5. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Bonds, the Loan Agreement and the Ordinance, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach or default under any ordinance, resolution, order, agreement, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.

6. To the best of my knowledge, the Issuer has received all certificates and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges, including, without limitation, all requisite orders, consents, certificates and approvals from the DEP, the West Virginia Infrastructure and Jobs Development Council and the Public Service Commission of West Virginia (the "PSC"), and the Issuer has taken any other action required for the imposition of such rates and charges,

including, without limitation, the enactment of an ordinance prescribing such rates and charges.

7. To the best of my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, the Bonds and the Ordinance, the acquisition and construction of the Project, the operation of the System, or the validity of the Bonds or the collection or pledge of the Net Revenues therefor.

8. All successful bidders will be made to comply with the required provisions for insurance and payment and performance bonds and such insurance policies or binders and such bonds will be verified for accuracy prior to commencement of construction. I will review the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, and verify that such surety bonds and policies: (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interest of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Ordinance and the Loan Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

Kim Weber

KIMBERLY B. WEBER,
CITY ATTORNEY

SPILMAN THOMAS & BATTLE, PLLC
ATTORNEYS AT LAW

March 23, 2004

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Jackson Kelly PLLC
P. O. Box 553
Charleston, WV 25322

Re: The City of Charleston
Sewerage System Revenue Bonds, Series 2004 A

Ladies and Gentlemen:

We are special counsel to The City of Charleston (the "Issuer") in connection with certain matters before the Public Service Commission of West Virginia (the "Commission"). As such special counsel, we are of the opinion that:

The Issuer has received the Commission Order entered on May 31, 2002, in Case No. 02-0370-S-PW ruling that a certificate of convenience and necessity is not required for the telemetry portion of the Project, and has received the Commission's Recommended Decision issued October 10, 2003, in Case No. 03-0437-S-CN, which became a Final Order of the Commission on October 30, 2003, granting to the Issuer a certificate of public convenience and necessity for the Phase I treatment plant upgrade portion of the Project and approving the financing for the Project. The time for appeal of both Commission orders has expired without any appeal. Both orders remain in full force and effect.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

Spilman Thomas & Battle, PLLC

SPILMAN THOMAS & BATTLE, PLLC

299749

SPILMAN THOMAS & BATTLE, PLLC
ATTORNEYS AT LAW

David G. Hammond
304.340.3635
dhammond@spilmanlaw.com

March 23, 2004

City of Charleston
P. O. Box 2749
Charleston, West Virginia 25330

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, West Virginia 25311

West Virginia Water Development Authority
180 Association Drive
Charleston, West Virginia 25311

Jackson & Kelly PLLC
P. O. Box 553
Charleston, West Virginia 25322

Re: Final Title Opinion for the City of Charleston

Ladies and Gentlemen:

We are special counsel to The City of Charleston (the "Issuer") and its Sanitary Board ("Sanitary Board") in connection with a proposed project to construct certain extensions, additions, betterments and improvements to the existing sewerage system of the Issuer (the "Project"). We provide this final title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Department of Environmental Protection (the "DEP") for the Project. Please be advised of the following:

1. We are of the opinion that the Issuer is a duly created and validly existing municipality possessed with all the powers and authority granted to municipalities under the laws of the State of West Virginia to construct, operate and maintain the Project as approved by the DEP.

2. The Issuer has obtained all necessary permits and approvals for the construction of the Project. In rendering this opinion, we have relied solely upon the "Certificate of Consulting Engineer" with respect to the Project made by Harvey A. McCallister, Jr., P.E., of HNTB Corporation, the consulting engineer for the Project, dated March 23, 2004.

3. We have investigated and ascertained the location of, and are familiar with the legal description of, the necessary site required for the Project (the "Site") as set forth in the plans for the Project prepared by HNTB Corporation, the consulting engineer for the Project.

4. We have examined the records on file in the office of the Clerk of the County Commission of Kanawha County, West Virginia, the county in which the Site is located, and, in our opinion, the Issuer has acquired such estate or interest in the Site sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the Project. The Issuer's title to the Site was obtained by a right of entry order entered by the Court on March 3, 2004, in that certain eminent domain proceeding pending in the Circuit Court of Kanawha County, West Virginia, as Civil Action No. 04-MISC.-77. The Issuer's title to the Site is defeasible in the event the Issuer does not satisfy any resulting judgment or award in the proceedings for acquisition of the Site, and our certification is subject to the pending litigation.

5. A certified copy of the right of entry order entered by the Court that is referred to in paragraph 4 above has been duly recorded in the office of the Clerk of the County Commission of Kanawha County, West Virginia, to protect the legal title to and interest of the Issuer in the Site.

Our opinions expressed herein are rendered exclusively for you and your counsel, and cannot be used or relied upon by any other party without our prior written consent.

Very truly yours,

SPILMAN THOMAS & BATTLE, PLLC

By: David G. Hammond

David G. Hammond
West Virginia State Bar No. 4843
P. O. Box 273
Charleston, West Virginia 25321
304.340.3835

DGH:jh2:300409v2